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WHITE COLLAR CRIME
(Money Laundering)

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

OVERSIGHT OF THE PROBLEM OF WHITE COLLAR CRIME

MARCH 18 AND 25, 1986

Serial No. J-99-89

PART 2

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WHITE COLLAR CRIME—Part 2

(Money Laundering)

TUESDAY, MARCH 18, 1986

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:03 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Biden and Grassley.

Staff present: Dennis Shedd, chief counsel and staff director; Michael Regan, staff counsel, G. Robert Blakey, minority special counsel; and Kolan Davis, counsel.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

The committee continues its series of white collar crime hearings today and focuses its attention on the pervasive problem of money laundering. This committee has previously recognized the dilemma for our law enforcement agencies posed by money laundering and considered legislative remedies such as S. 1335, which I introduced last year at the request of the administration.

Money laundering acts as a bridge for criminals who seek to turn proceeds from illegal activities into seemingly legitimate enterprises and profits. As witnesses have suggested at prior white collar crime hearings, as a result of the complexity and subtlety of money laundering schemes or, sadly, in some cases, complicity in the schemes, bank employees have allowed money laundering to occur without reporting it. Transactions below the amount requiring report by financial institutions to the Internal Revenue Service, wire transfers, and transactions with foreign banks have allowed criminals to launder ill-gotten gains.

This committee will hear testimony and consider the extent of the problem of money laundering, examine current methods employed by criminals to "legitimize" illegal profits, and identify the institutional practices which have contributed to the unbridled growth of money laundering.

Since this committee last met to consider a legislative proposal to curtail this illegal practice, there have been some important Federal court decisions which have further focused our attention on questions and problems encountered by our banks with respect to money laundering and the need for reform of our laws.

We have a distinguished list of witnesses and we look forward to having them present testimony here today. Our first witness I believe is the Honorable David Queen, Deputy Assistant Secretary for Enforcement, U.S. Department of the Treasury, Washington, DC.

Mr. Queen, we are glad to have you with us and you may proceed.

STATEMENT OF DAVID D. QUEEN, ACTING ASSISTANT SECRETARY FOR ENFORCEMENT AND OPERATIONS, DEPARTMENT OF THE TREASURY

Mr. QUEEN. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you on the subject of money laundering today. I will provide an update on Treasury's involvement with this issue since we last appeared before you. I will then discuss legislative initiatives that will assist in Treasury's enforcement of the Bank Secrecy Act.

At the outset, let me express my appreciation to you, Mr. Chairman and members of this committee, for your continuing interest in this topic. This committee is fully aware of the implications of the money laundering problem— for law enforcement, for our financial community, and for our society at large. The Treasury Department welcomes the opportunity to work with you as you explore methods of improving our Nation's response to this challenge.

The enforcement and administration of the Bank Secrecy Act is the centerpiece of Treasury's efforts to combat money laundering. The reporting data generated pursuant to the Act and the regulations under it are essential to our country's investigations into a host of criminal, tax, and regulatory offenses.

Over the last several years, Treasury has devoted substantial attention to improving the compliance of financial institutions with the reporting of cash transactions under the Bank Secrecy Act. This effort has resulted in a major increase in the number of currency transaction reports filed with the Internal Revenue Service.

The vast increase in reporting volume has temporarily exceeded the capability of the IRS to process the forms and add the information to the data base. However, the Internal Revenue Service has directed considerable attention to this problem, and we expect that the backlog will be eliminated by June of this year.

Another improvement in our administration of the act has been the establishment last year of the Office of Financial Enforcement. Treasury has also assessed a number of civil penalties against financial institutions with substantial past Bank Secrecy Act violations.

In cases of substantial noncompliance, we routinely refer the case to the Criminal Investigations Division of the IRS for evaluation and investigation. The Internal Revenue Service then decides whether to refer the matter to the Department of Justice for criminal prosecution.

If there is an ongoing criminal prosecution, we discuss with the U.N. attorneys office that is handling the case whether to proceed with the civil case or to defer action until the conclusion of the criminal case.

We believe that Treasury's rigorous enforcement of the Bank Secrecy Act, including the imposition of civil penalties where appropriate, has contributed to enhanced awareness of the requirements of the Bank Secrecy Act.

I would now like to discuss legislative measures. First, Treasury urges early and favorable action on the Money Laundering and Related Crimes Act. This bill would provide, among other measures, civil summons authority for Treasury and a civil penalty for negligent violation of the Bank Secrecy Act.

Currently, Treasury has authority to assess civil penalties only for willful violations, which in this context means with specific intent or with reckless disregard of the law.

The prospect of penalties for negligent violations should encourage financial institutions to give more attention to full compliance.

There are two other legislative measures that are not contained in the administration's bill but which are included in a proposal which we would like to take this opportunity to share with the committee today.

This proposal was provided to Subcommittee Chairman Pickle of the House Ways and Means Committee in January, in response to his request for legislative initiatives that would assist in the fight against money laundering. We also plan to share it with the other committees considering the administration's bill.

First, the bill contains a provision to prohibit structuring of currency transactions to avoid the $10,000 currency transaction reporting requirement. The bill also provides seizure and forfeiture authority for currency related to a domestic reporting violation or interest in property traceable to the currency.

Finally of importance is the revision to the Right to Financial Privacy Act, the RFPA. The most important and least controversial of the revisions is the amendment to subsection 1103(c) of the RFPA, which now provides that nothing in the act shall preclude a financial institution from notifying a government authority that the institution has information which may be relevant to a possible violation of any statute or regulation.

The statute gives no guidance on what information can be given without running the risk of exposure to civil liability under the RFPA. The proposed amendment sets out explicitly that enough information can be given to enable Federal law enforcement authorities to proceed with legal process. We believe you will find very little opposition in the financial community to this particular provision of the RFPA.

Based on our conversation with bankers across the United States, banks want to cooperate with Federal law enforcement and need the protection of the proposed amendment.

In addition to seeking legislation, Treasury has been discussing with the Department of Justice and with the bureaus within Treasury responsible for Bank Secrecy Act compliance possible improvements to the Bank Secrecy Act regulations. We have circulated a draft of these amendments within Treasury and will publish them as proposed regulations in the Federal Register in the near future.

Mr. Chairman, this concludes my prepared remarks and I would, of course, be pleased to answer any questions you may have of me at this time.

[The prepared statement of Mr. Queen follows:]

Statement of David D. Queen
Acting Assistant Secretary (Enforcement and Operations)
U.S. Department of the Treasury

Mr. Chairman and members of the Committee:

Thank you for the opportunity to appear before you today on the subject of money laundering. Because the Treasury Department, like the Justice Department, has testified in the past before this Committee in great detail on this subject, I will not go into depth regarding the history of Treasury's battle against money laundering. Instead, I will provide an update on Treasury's involvement with this issue since we last appeared before you. I will then discuss briefly legislative initiatives that will assist in Treasury's enforcement of the Bank Secrecy Act.

At the outset, let me express my appreciation to you, Mr. Chairman, and the members of this Committee for your continuing interest in this topic. This Committee is fully aware of the implications of the money laundering problem -- for law enforcement, for our financial community, and for our society at large. The Treasury Department welcomes the opportunity to work with you as you explore methods of improving our nation's response to this challenge.

The enforcement and administration of the Bank Secrecy Act is the centerpiece of Treasury's efforts to combat money laundering. The reporting data generated pursuant to the Act and the regulations under it are essential to our country's investigations into drug trafficking, organized crime, and a host of related offenses. State and local law enforcement, as well as Federal agencies, make use of this data to initiate investigations and to support ongoing investigations.

Improved Compliance with the Reporting Requirements

Over the last several years, Treasury has devoted substantial attention to improving the compliance of financial institutions with the reporting of cash transactions under the Bank Secrecy Act. This effort has resulted in a major increase in the number of Currency Transaction Reports, or Forms 4789, filed with the Internal Revenue Service. Approximately 700,000 such forms were filed in 1984, and an estimated 1.7 million were filed last year.

The vast increase in reporting volume has temporarily exceeded the capability of the IRS to process the forms and add the information to the data base. However, IRS has directed considerable attention to this problem, and $6 million is included for this in the pending FY 1986 supplemental of $340 million. A new division of approximately 250 people has been established at the Detroit Data Center to process the Currency Transaction Reports (CTRs), and the Reports of Foreign Bank Accounts. It is my understanding that they are now capable of handling the current level of receipts, which is approximately 60,000 CTRs per week. Arrangements have been made to contract out the processing of 700,000 CTRs. We expect that the backlog will be eliminated by June of this year.

The Office of Financial Enforcement

Another improvement in our administration of the Act has been the establishment last year of the Office of Financial Enforcement. We have taken this step to place greater emphasis on the program and provide a basis for expanding Treasury's program to administer the Bank Secrecy Act.

Civil Penalty Assessment-Relation to Criminal Cases

In the wake of the publicity surrounding the Bank of Boston case, over sixty banks or bank holding companies have been identified as being in violation of the Bank Secrecy Act. Many of these institutions have come forward as volunteers. Others have come forward as a result of bank regulatory exams, particularly those of the Comptroller of the Currency. To date, thirteen civil penalties have been assessed under 31 U.S.C. § 5321, ranging from $121,000 to $ 4.75 million in the case of Bank of America. The dollar amounts of the penalties that have been assessed to date reflect the level of cooperation and commitment to future compliance of the banks involved, as well as other factors. Other cases are under review, and we anticipate that additional penalties will be assessed shortly. In many instances, the cases are taking several months to conclude because of the time required for banks to conduct an examination of past compliance and to reconstruct past unreported transactions for late-filing of Currency Transaction Reports.

In all the cases in which penalties have been assessed, Treasury predicated the assessment on a finding of a willful violation based on reckless disregard for the law. In no case have we found instances of intentional money laundering or specific intent to violate the law. If specific intent to violate is evidenced, it would be our policy generally to refer the matter for possible criminal action prior to civil action.

In a case of voluntary disclosure of substantial noncompliance or penalty referral by a bank regulatory agency, we routinely refer the case to the Criminal Investigations Division of the Internal Revenue Service for evaluation and investigation. The Internal Revenue Service then decides whether to refer the matter to the Department of Justice for criminal prosecution. If there is an ongoing criminal prosecution, we discuss with the United States Attorney's Office that is handling the case whether to proceed with the civil case or to defer action until the conclusion of the criminal case.

Criminal penalties (under 31 U.S.C. § 5322) and civil penalties (under 31 U.S.C. § 5321) are cumulative. There is nothing to preclude imposition of civil penalties at the conclusion of a criminal case or imposition of criminal penalties at the conclusion of a civil case. We explicitly state in all our penalty settlement agreements that nothing in the agreement "limits in any way the right of the United States to investigate or prosecute any criminal violation of the Act."

We want to emphasize that Treasury has not as yet closed the door to volunteers, and we continue to encourage financial institutions to come forward with past violations. Non-volunteer banks will be dealt with more severely. Financial institutions that have not filed required Currency Transaction Reports for any reason have a continuing legal duty to do so. The case of a bank that becomes aware of past non-compliance and makes no effort to contact Treasury and to late-file Currency Transactions Reports as we direct, will not be treated as a civil case.

We believe that Treasury's rigorous enforcement of the Bank Secrecy Act, including the imposition of publicly announced, substantial civil penalties, where appropriate, has contributed to enhanced awareness of the requirements of the Bank Secrecy Act. As a consequence, we believe, as confirmed in our dealings with the many banks with which we have met, that overall compliance has improved and that full compliance has become a high priority with many major financial institutions.

Legislative Intiatives

I would now like to discuss briefly legislative measures that will help in the fight against money laundering and enhance Treasury's Bank Secrecy Act enforcement efforts. First and foremost is early and favorable action on the "Money Laundering and Related Crimes Act," S. 1335, which was developed jointly by the Departments of Treasury and Justice. From Treasury's standpoint, this bill contains two critical revisions to the Bank Secrecy Act. First, the bill provides Treasury with civil summons authority for the first time. Second, the bill provides for a civil penalty for negligent violations of the Bank Secrecy Act. Currently, Treasury has authority to assess civil penalties for "willful" violations under 31 U.S.C. § 5321. "Willful" in a civil penalty context means with specific intent or with reckless disregard of the law. Nevertheless, mere negligent non-filing of currency reports deprive the Government of potentially useful law enforcement information to the same extent as willful non-filings. The prospect of penalties for negligent violations should encourage financial institutions to give more attention to good compliance.

There are two other legislative proposals not contained in S. 1335, that were drafted at the request of Subcommittee Chairman Pickle and forwarded to him by Treasury in January. We would like to take this opportunity to share these proposals with the Committee today. We will also share these proposals with the other committees considering the Administration's bill.

The first proposal would prohibit structuring of currency transactions to avoid the $10,000 currency transaction reporting requirement. Structuring includes the well-known practice of "smurfing". Recent decisions in three Federal Circuits have made it clear that the current law is inadequate to sustain consistent prosecutions for structuring. The proposal would make a person who structures transactions to avoid the currency reporting requirements, or who causes a financial institution not to file a required report, subject to the criminal and civil sanctions of the Bank Secrecy Act.

The second proposal would provide seizure and forfeiture authority for currency related to a domestic reporting violation or interest in property traceable to the currency. The forfeiture would not affect bona fide purchasers who took the currency or property without notice of a reporting violation. Currently, there is forfeiture authority only for monetary instruments underlying violations of the reporting requirements for internationally transported monetary instruments.

Finally, of major importance is revision to the Right to Financial Privacy Act (RFPA). The revisions to the RFPA contained in the Administration's money laundering bill can be considered as an adjunct to that bill, with application separate from the subject of criminal money laundering legislation or enforcement of the Bank Secrecy Act.

The most important and least controversial of the revisions is the amendment to subsection 1103(c) of the RFPA, 12 U.S.C. § 3403 (c). Currently, § 3403(c) provides that nothing in the Act shall preclude a financial institution from notifying a govenment authority that the institution has information "which may be relevant to a possible violation of any statute or regulation." The statute gives no guidance on what information can be given without running the risk of exposure to civil liability under the RFPA. The proposed amendment sets out explicitly that enough information can be given to enable Federal law enforcement authorities to proceed with legal process, e.g., summons, subpoena, or search warrant, in accordance with the RFPA. This information at a minimum must include the nature of the suspicious activity, the name of the customer, and other identifying information necessary to identify the customer or the account involved.

We believe you will find very little opposition in the financial community to this particular revision of the RFPA. The revision imposes no new legal duty on financial institutions, clarifies the right of financial institutions to act as good citizens without risk of civil liability, far outweighs any jeopardy to legitmate privacy interests, and would be of major assistance to Federal law enforcement.

For consistent application throughout the United States this amendment must be accompanied by the proposed preemption provision so that a financial institution that complies with the RFPA will not run afoul of any more restrictive state privacy law. The proposed clarification of the "good faith defense" to civil liability is also needed to protect financial institutions who cooperate with Federal law enforcement in good faith within the confines of the RFPA.

Regulatory Improvements

In addition to seeking legislation, Treasury has been discussing with the Department of Justice, and with the bureaus within Treasury responsible for Bank Secrecy Act compliance, possible improvements to the Bank Secrecy Act regulations. We have circulated a draft of these amendments within Treasury and will publish them as proposed regulations in the Federal Register in the near future.

As this Committee is aware, Treasury made a number of regulatory improvements to the Bank Secrecy Act regulations last year. This new set of proposals will be a continuation of our efforts to implement the Act as effectively as possible.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to answer any questions you or the other members of the Committee may have.

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Bank Secrecy Act (31 U.S.C. § 5311 et seq.) is amended as follows:

SEC. 1. Section 5313 of Title 31 of the United States Code is amended by adding to the end of subsection (a) a sentence which reads as follows:

No person shall cause or attempt to cause a domestic financial institution to fail to file a report required by this subsection, shall cause or attempt to cause a domestic financial institution to file a report required by this subsection that contains a material omission or misstatement of fact, or shall structure or assist in structuring a transaction for the purpose of evading the reporting requirements of this subsection.

SEC. 2. Section 5317 of Title 31 of the United States Code is amended by:

a. Revising the first sentence of section 5317(c) [illegible] Title 31 of the United States Code to read as follows:

> (c) A monetary instrument being transported, or which has been transported, or any interest in any property, including any deposit in a financial institution, traceable to such instrument, may be seized and forfeited to the United States Government when a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement. No property shall be forfeited under this paragraph from a bona fide purchaser for value who takes without notice of the violation of section 5316.

b. Adding a new subsecton (d) which reads as follows:

> (d) A monetary instrument or any interest in other property, including any deposit in a financial institution, traceable to such instrument involved in a transaction or attempted transaction required to be reported under section 5313(a) of this chapter may be seized and forfeited to the United States Government under the provisions of subchapter C of chapter 75 of Title 26 of the United States Code whenever a person (excluding a domestic financial institution, a partner, director, officer or employee of a domestic institution liable under subsection 5313 (a)(1) of this section) willfully violates section 5313(a) of this chapter. No property shall be forfeited under this paragraph from a bona fide purchaser for value who takes without notice of the violation.

SEC. 3. Section 5321 of Title 31 of the United States Code is amended by:

a. Adding to subsection (a) a new paragraph (4) to read as follows:

> (a)(4) The Secretary may impose a civil penalty on a person or persons (excluding a domestic financial institution, a partner, director, officer or employee of a domestic institution) willfully violating section 5313(a) of this chapter. A civil penalty under this paragraph may not be more than the amount of the United States coins and currency (or other monetary instruments the Secretary may prescribe) for which a report was required under section 5313(a) of this chapter. A civil penalty under this paragraph is reduced by an amount forfeited under section 5317(d) of chis title.

b. Deleting "or (2)" from subsection (b) and adding in lieu thereof ", (2) or (4)".

c. Deleting "5317(b)" in subsection (c) and adding in lieu thereof "5317(c) or (d)" and by deleting "subsection(a)(2)."

SEC. 4. Section 7302 of Title 26 of the United States Code is amended by inserting, immediately following "internal revenue laws" each time it appears, the following: "or provisions enforced or administered by the Internal Revenue Service under Title 31 of the United States Code."

SEC. 5. Section 7321 of Title 26 of the United States Code is amended by adding "or under any other laws that the Secretary may designate" immediately following "title".

SEC. 6. Section 7327 of Title 26 of the United States Code is amended by inserting immediately following "internal revenue laws", the following: "or provisions enforced or administered by the Internal Revenue Service under Title 31 of the United States Code."

SEC. 7. Section 7608(b) of Title 26 of the United States Code is amended by adding "or under any other laws that the Secretary may designate" immediately following "responsible" in paragraph (1) and immediately following "the internal revenue laws" in paragraph (2)(C).

EXPLANATIONS OF PROPOSED AMENDMENTS

The general purposes of the proposed amendments are (1) to subject a person who launders money to potential civil and criminal penalties for certain money laundering activity, *i.e.*, causing a financial institution not to file a required report or to file an incorrect report and structuring or assisting in structuring a transaction to evade the reporting requirements, (2) to add an "attempt" provision, and (3) to create a program for forfeiting monetary instruments, or property interests traceable to those instruments, involved in violations of 31 U.S.C. § 5313 by persons other than financial institutions.

Section 1

Under present law, money launderers are successfully prosecuted in some judicial circuits for causing financial institutions not to file reports on multiple currency transactions totaling more than $10,000 or causing financial institutions to file incorrect reports. In such cases, defendants are charged with violations of 18 U.S.C. § 2 (aiding and abetting or causing another to commit an offense) and § 1001 (concealing from the government a material fact by a trick, scheme, or device). For example, in *United States v. Tobon-Builes*, 706 F.2d 1092 (11th Cir. 1983), *the Eleventh Circuit Court of* Appeals upheld a conviction under 18 U.S.C. § 1001 where the defendants had engaged in a money laundering scheme in which they had structured a series of currency transactions, each one less than $10,000 but totaling more than $10,000, to evade the reporting requirements. *See also United States v. Massa*, 740 F.2d 629, 645 (8th Cir. 1984), *cert. denied sub nom Skinner v. United States*, ___ U.S. ___, 105 S.Ct. 2357 (1985); *United States v. Sanchez Vazquez*, 585 F.Supp. 990, 993 (N.D. Ga. 1984); *United States v. Konefal*, 566 F.Supp. 698 (N.D.N.Y. 1983) (prosecution for structuring upheld under Title 31). In contrast, the First Circuit Court of Appeals, in *United States v. Anzalone*, 766 F.2d 676 (1st Cir. 1985), the Eleventh Circuit Court of Appeals in *United States v. Denemark*, 779 F.2d 1559 (11th Cir. 1986), and the Ninth Circuit Court of Appeals in *United States v. Varbel*, 780 F.2d 758 (9th Cir., 1986) have held that structuring currency transactions to avoid the reporting requirements did not violate 18 U.S.C. § 1001.

The proposed amendment to 31 U.S.C. § 5313(a) would codify *Toubon-Builes* and like cases and would negate the effect of *Anzalone*, *Varbel* and *Denemark*. The proposed amendment would expressly subject to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact. In addition, the proposed amendment would create the offense of structuring a transaction to evade the reporting requirements, without regard for whether an individual transaction is, itself, reportable under the Bank Secrecy Act. For example, a person who converts $18,000 in currency to cashier's checks by purchasing two $9,000 cashier's checks at two different banks or on two different days with the specific intent that the participating bank or banks not be required to file Currency Transaction Reports for those transactions, would be subject to potential civil and criminal liability and the currency or such monetary instruments as the Secretary prescribes) or property traceable to the currency (would be subject to seizure and forfeiture under the proposed amendment in section 2. A person conducting the same transactions for any other reasons or a person splitting up an amount of currency that would not be reportable if the full amount were involved in a single transaction, e.g., splitting $2000 in currency into four transactions of $500 each, would not be subject to liability under the proposed amendment.

The proposed amendment to 31 U.S.C. § 5313(a) would also add a much-needed attempt provision to the Bank Secrecy Act. Under current law, a financial institution is not required to report a currency transaction until 15 days after the transaction has taken place; therefore, a reporting violation does not occur until (1) 15 days have passed since the time of the transaction and (2) the financial institution has failed to file a report. This situation creates two problems for prosecutions of persons who have structured their transactions to avoid the reporting requirements of the Bank Secrecy Act. First, after 15 days the money launderers may have fled, and the investigative trail may be cold. Second, an individual who has attempted to avoid the reporting requirements may escape liability if the financial institution, despite the efforts of the money launderer, files a timely, correct report. The proposed attempt provision would cure these present flaws by: (1) authorizing an earlier seizure of individuals and funds, and (2) subjecting individuals who attempt to frustrate the reporting requirements of the Act to potential criminal liability at the time of their attempt and not 15 days later.

Section 2

31 U.S.C. § 5317 would be amended to add a new subsection (d), which would, for the first time, allow property related to a violation of section 5313, to be seized and forfeited. This new subsection would be directed primarily at a person who launders money or attempts to launder money in collusion with a financial institution, who intentionally subverts or who attempts to subvert the reporting requirements by causing or attempting to cause an "innocent" or otherwise unwitting financial institution to fail to file a report or to file a materially incomplete or inaccurate report, or a person who structures or assists in structuring a transaction for the purpose of evading the reporting requirements, where a report would, but for its artificial structure, be required under section 5313(a). For example, a person may engage in a pattern of cash deposits at a financial institution where each deposit involves less than $10,000 in currency and where the total of the deposits equals substantially more than $10,000. If the activity were performed in a willful attempt to cause the financial institution to fail to file a report required by section 5313(a), or if the activity is a transaction structured for the purpose of evading the reporting requirements of section 5313(a), the currency used or intended to be used, or the interest in the property traceable to such currency would be subject to seizure and forfeiture. Willfulness in a forfeiture case would be determined under the civil, reckless disregard standard in this, a civil, in rem forfeiture action.

This forfeiture provision is intended to reach interests in property which can be clearly traced to the currency that gave rise to the section 5313(a) violation. It would reach monies deposited in bank accounts or other types of financial accounts, e.g., checking accounts, money market accounts, and certificates of deposit, and would apply to real and personal property that had been purchased by a violator with a monetary instrument that gave rise to a section 5315(a) violation. However, the provision is not intended to apply to the property interests of innocent third parties. It would not apply to cash received by an innocent bank, in which the money launderer no longer had any property interest, that a money launderer had used in the purchase of a cashier's check, but it would apply to the cashier's check in the hands of the money launderer or in the hands of the person on whose behalf the money launderer was acting.

The amendment is needed because current forfeiture authority is an inadequate tool against money laundering. For example, forfeiture authority under federal drug laws, 21 U.S.C. § 881, requires a finding of probable cause to believe that the money was used in connection with a violation of the drug laws. Laundered money is frequently connected to violations of drug laws; however, money laundering is also used for non-drug criminal activity and, even where the operation is part of a drug trafficking organization, the money laundering can be arranged so that it is difficult, if not impossible, to prove such a connection.

Section 5317(c) is amended to provide express authority to seize assets clearly traceable to a monetary instrument being transported or which has been transported in violation of section 5316. The violation of section 5316 need not be willful in order for an unreported monetary instrument to be subject to seizure and forfeiture.

Forfeiture authority under current tax assessment and collection statutes, 26 U.S.C. §§ 6851 and 6861, is also an inadequate tool against money laundering. Forfeiture authority under such statutes requires proof that a Title 26 tax deficiency is in jeopardy. This involves a computation of taxable income, which is a difficult computation with respect to illegal activity. Furthermore, since only the tax deficiency is collectable under such authority, much of the laundered money is unreachable.

Finally, tax assessment and collection authority under 26 U.S.C. § 6867 is also an inadequate tool against money laundering. That authority permits a jeopardy/termination assessment against a person "in physical possession" of cash (or equivalent) who does not claim ownership or who claims that an unknown third person owns the money but permits seizure of only fifty percent of the cash, as income tax due. The balance is available to a person who comes forward to claim ownership. The launderer or actual owner of the money may be able to regain half of it.

In contrast, the proposed forfeiture authority is likely to be a very valuable tool against money laundering. As evidence of the usefulness of such forfeiture authority, one can look to current forfeiture authority under the Bank Secrecy Act. Under such authority, large amounts of currency, i.e., more than $10,000, that a money launderer moves into or out of the country may be seized and forfeited to the United States if he fails to report it. This forfeiture authority has been used often and effectively as an important weapon in Treasury's war against money launderers.

Numerous case examples demonstrate how effective the proposed forfeiture authority can be. Following are three situations involving reporting violations where the proposed forfeiture authority would have enhanced law enforcement capabilities. The fourth example is a non-willful violation where no forfeiture would occur.

Case No. 1: An investigation developed evidence that a group of suspected narcotic traffickers had willfully caused domestic financial institutions not to file required Currency Transaction Reports on transactions totaling more than $50 million. However, the investigation did not develop sufficient admissible evidence to connect the laundered money to violations of the drug laws. Therefore, the money was not forfeitable under the current forfeiture authority at 21 U.S.C. § 881. Under the proposed forfeiture authority, the entire $50 million, or assets traceable to it, would have been forfeitable. Note that such assets in the hands of a bona fide purchaser for value would not have been forfeitable.

Case No. 2: A South Florida money laundering specialist laundered $57 million over 18 months through various Miami bank accounts. He deposited duffel bags and boxes filled with cash into accounts at Miami banks in collusion with certain bank officials; the banks filed no reports. The funds were transferred from the Miami accounts to other acounts and ultimately to Colombia. The admissible evidence in this case did not tie the $57 million to narcotics activity; therefore, the Government was unable to seize any of the funds under 21 U.S.C. § 881. Under the proposed forfeiture authority, the funds might have been seized prior to their leaving the United States. Furthermore, even if law enforcement officers had been unable to seize the money before it left the country, the proposed amendments would have authorized a civil penalty equal to the amount of the unreported currency.

Case No. 3: An individual represented to numerous financial institutions that he was conducting business as a bullion dealer and that he would be depositing large amounts of currency with those institutions. He opened business accounts, using his true name and the name of a bullion-dealer organization. He was not, in fact, a bullion dealer but was a money launderer. The bullion-dealer organization was strictly a shell corporation he used to launder money for his clients.

Over a 12-month period he deposited about $10 million in currency into 40 different accounts with 25 financial institutions in Florida and California. He drew checks on the accounts, payable to nominee names, which were then given to his clients. The check amounts were slightly less than the deposit amounts and the difference represented his money laundering commission.

The individual filed Federal tax returns, showing his occupation as a bullion dealer. Gross receipts on the tax returns approximated the amounts deposited into the bank accounts. Cost of goods sold (expenses) shown on the returns approximated the amount of the checks drawn on the accounts. The profit on the returns resulted from the commissions.

Although the banks filed reports on the individual's transactions, the individual would have violated amended 31 U.S.C. § 5313 (he did violate 18 U.S.C. § 1001) because he made a material misstatement of fact, i.e., a false occupation and a false business name, which caused the bank to file a form containing a material misstatement of fact. Current statutes do not allow for seizure of any of the funds deposited in the bank accounts. The proposed amendments to 31 U.S.C. §§ 5313(a) and 5317(b) would subject these deposited funds to seizure and forfeiture.

Case No. 4: A person has saved money to purchase a home, and, according to the real estate broker, needed a $9,000 down payment. On the day of the closing, she went to her bank and withdrew $9,000 in currency. When she arrived at the closing, her broker revealed that he had made an error in his calculations and that she needed $11,000, not $9,000, for the down payment. She returned to her bank and withdrew another $2,000 in currency. Because she withdrew the $11,000 in currency in two transactions, the bank filed no report, despite the requirement on the report form that multiple transactions within a 24-hour period be aggregated and treated as a single transaction. Her withdrawl of the $11,000 in currency in two transactions presumably caused the bank to fail to file a required Currency Transaction Report; however, she would not have been criminally liable and her interest in the house would not have been subject to forfeiture under the proposed amendments because she had not willfully caused the bank to fail to file a required report and her transactions were not structured for the purpose of evading the reporting requirements.

Section 3

31 U.S.C. § 5321 would be amended by adding a new subsection (a)(4) authorizing a civil penalty against a person who willfully violates section 5313(a). No amendment is necessary to 31 U.S.C. § 5322 for imposition of criminal penalties for violations of section 5313(a). Civil penalties can be imposed where a person had specific intent to violate the law or acted with reckless disregard for the law. This standard for willfulness is consistent with case law construing willfulness in civil penalty contexts and with Treasury's interpretation of willfulness under the Bank Secrecy Act.

The proposed civil penalty would complement the proposed forfeiture provision authorizing a civil penalty sufficient to fill the gap between the value of the property seized under proposed section 5317(d) and the value of the financial instruments involved in the unlawful transactions. This mirrors current treatment of forfeiture of monetary instruments seized under section 5317 and civil penalties imposed under section 5321(a)(2) (for violations of Bank Secrecy Act reporting requirements regarding transporting currency into or out of the United States.

Section 4

The authority of the Internal Revenue Service to forfeit property is currently set forth in 26 U.S.C. § 7302 and is limited to property used or intended to be used in violating the internal revenue laws. IRS agents enforce and administer laws in Title 31 of the United States Code (the currency transaction reporting provisions) in addition to the internal revenue laws. The proposed amendment to 26 U.S.C. § 7302 would allow the IRS to use this provision to forfeit property under proposed 31 U.S.C. § 5313(d).

It should be clearly understood that the forfeiture authority under section 7302 of Title 26 and the procedures relating to the administration and disposition of forfeited property are entirely separate and distinct from the provisions for the seizure of property for the collection of taxes provided under subchapter D of chapter 64 of Title 26.

Section 5

Those with an interest in property seized for forfeiture by the Internal Revenue Service may file a petition for remission or mitigation. This is the procedure that innocent persons claiming an interest in property seized for forfeiture, such as lien holders, may use to assert their interests. The Internal Revenue Service applies the customs laws relating to remission or mitigation (26 U.S.C. § 7327). This provision would be amended so that the same remission and mitigation of forfeiture proceedings currently applied to forfeitures under customs and internal revenue laws would also apply to forfeitures of property used in violation of the Title 31 provisions enforced by the Internal Revenue Service.

Sections 6 and 7

Current law limits IRS agents' seizure authority to "property subject to forfeiture under the internal revenue laws." Since IRS enforces and administers other laws in addition to the internal revenue laws, the amended language is required to authorize IRS officers to seize property subject to forfeiture under these additional laws. The changes coordinate with the change in section 7302.

The **Chairman**. Thank you very much.

Mr. Queen, in your prepared remarks I believe you stated that compliance of financial institutions with the reporting of cash transactions under the Bank Secrecy Act has improved in recent years. Full compliance will nonetheless necessitate more manpower to process the increased filing of financial transaction reports. How do you propose to handle that increased workload? And what if Congress lowers the threshold amount for filing a CTR?

Mr. **Queen**. Mr. Chairman, the IRS currently has directed considerable attention to this problem. Six million dollars is included in the pending fiscal year 1986 supplemental for IRS, totaling $340 million. A new division of approximately 250 people has been established at the Detroit Data Center to process the currency transaction reports and reports of foreign bank accounts. It is my understanding that they are now capable of handling the current level of receipts, which is approximately 60,000 CTR's per week. Arrangements have been made to contract out the processing of some 700,000 CTR's.

Based on the data that currently is before us, our level of intake is not badly out of skew with our ability to process, and what we are now trying to do is concentrate on the backlog that exists.

The **Chairman**. Mr. Queen, in your prepared remarks you mention the problem of structuring of currency transactions under the $10,000 currency transaction reporting requirements. If Congress passed a law to prohibit this practice, what difficulties would the Department of the Treasury and other law enforcement agencies encounter in enforcing such a law, and how would you propose to handle the difficulties?

Mr. **Queen**. I would like to say that whatever difficulties arise, I will be looking forward to them because we are in very serious need of closing off that particular loophole. Obviously, the biggest burden in handling the structuring issue, that is, breaking out transactions which would otherwise total $10,000 so that they fall under the amount, would fall on the banking institutions, who would need to handle an increased volume of CTR's that they would be filing as well as address the matter of the notification method that they would provide to us.

We do not believe that we are talking about an enormous increase in the number of transactions, because what we are discussing quite obviously, Mr. Chairman, are those minority of people who are setting out with specific criminal intent to restructure their transactions to come under the $10,000 amount. As is obvious I think to most of us in law enforcement, the overwhelming majority of CTR's currently being filed are being filed by law-abiding citizens who will continue to file their transactions and who are obviously not attempting to circumvent the requirements. So I hope that addresses your concern.

The **Chairman**. Senator McConnell is due here to take my place and in the meantime I am going to turn to my able and distinguished ranking member here on this committee, Senator Biden of Delaware. Senator, if you will preside here until someone comes from the majority, I would appreciate it.

Senator **Biden**. I would be happy to, Senator.

The **Chairman**. I want to welcome these other witnesses here, Mr. Jonathan Rusch, counsel of the President's Commission on Organized Crime; Mr. Robert H. Hodges, Jr., executive vice president and general counsel, South Carolina Bankers Association, on behalf of the American Bankers Association—Mr. Hodges used to be on my staff years ago.

Mr. Hodges, I am glad to see you again. I am glad to have you here.

And Mr. Samuel J. Buffone, White-Collar Crime Committee, Criminal Justice Section, American Bar Association. Now, we have those three on the panel and then we have another panel made up of Mr. Stephen Trott and Mr. William Weld. We are glad to have all of you gentlemen here and we thank you for your presence and for your testimony and be assured that it will be given most careful consideration.

There is a judgeship nomination on the floor now and I am compelled to go there, and so I will ask Senator Biden if——

Senator **Biden** [presiding]. Thank you, Mr. Chairman. I would be delighted to take over and at some point before 3 o'clock, if we do not have anyone here, with your permission I am going to recess for a few minutes because I have to make a statement on that nominee also that we vote on by 3 o'clock.

We apologize to all of you. We have what has turned out to be a relatively controversial nominee on the floor and both the chairman and I have an obligation to speak to it.

Let me put my entire opening statement in the record as if read and not take the committee's time or the witness' time to do that now, and move on if I may.

[The prepared statement of Senator Biden follows:]

Opening Statement
Joseph R. Biden, Jr.

Mr. Chairman, today we will reexamine the issue of moneylaundering as part of our ongoing white collar crime hearings. The issue of moneylaundering is but an aspect of the broader problem of white collar crime in our society and its link to traditional forms of criminal conduct. Recent prosecutions of major banks for currency transaction offenses raise important issues:

- is the violation of the currency transaction statutes as wide spread as it seems?
- why are these prosecutions only being brought now when the basic legislation was enacted so long ago?
- are the existing tools to deal with moneylaundering adequate?
- how can we get our "legitimate institutions" to play more responsible roles in our society's effort to control criminal behavior?

Moneylaundering is any process by which receipts from illegal activities are handled in such a way as to make them appear to have come from a legitimate source. Or as the Organized Crime Commission Report quoted a former moneylaunder,

> "...Laundering money is to switch the black money, or dirty money, to clean money..."

In reviewing the process used to launder illicit cash we have heard stories about some of our upstanding banks on main street, accepting shopping bags full of 5, 10 and 20 dollar bills. To put it in perspective we must realize that $1 million in 5, 10 and 20 dollar bills weighs over 200 pounds. That same 1 million in 100 bills weighs 22 pounds. Clearly, anyone involved in illicit activities must figure out how to change millions or even billions of dollars over the course of a year, into a manageable commodity.

Last year as one after another major bank in this country pled guilty to violations of currency transaction reporting requirements we all became aware of the lack of attention this issue receives from both the financial community and the government enforcement agencies. Last year we learned that the Regulatory agencies responsible for monitoring the Bank Secrecy Act were not even aware of new regulations and that they were doing little more than cursory exams at most banks. We've learned about major backlogs in transaction forms (the tool used to detect irregular cash transactions) at Treasury that preclude prompt investigation of possible moneylaundering schemes. Senator Roth concluded after a hearing on this issue last year,

> "...It seems to me neither the private sector nor the regulatory agencies have given high enough priority to Title 31... [the Bank Secrecy Act]."

Today we will hear, hopefully, what improvements have been made by the government agencies and banking community to pursue the billions of dollars that are laundered either domestically or off shore. The tragedy is that every dollar laundered means one additional dollar that is available to support new supplies of cocaine or heroin on the streets of this country. Let us remember that when we talk today about "technical" reporting requirement violations we are talking about money that supports organized crime and narcotics traffick.

As I said in 1980 when I called a hearing to examine the use of existing forfeiture statutes by the Justice

Department, the key to damaging these enterprises is by focusing on the financial aspects of the crime. The bottom line from that forfeiture hearing and a report by the General Accounting Office was that the existing statute which had been on the books since 1970 had seldom been used and that no one in the Justice Department had expertise in the forfeiture law. Additionally, the enforcement agencies had inaccurate records on forfeiture cases and there was little incentive to pursue forfeiture of assets investigations.

However, since then I believe there has been a greater commitment to pursuing seizure and forfeiture of assets. In fact Congress amended the forfeiture law in 1984 in an effort to improve and encourage even greater use.

As we listen to witnesses today I wonder if we will be following a similar course in trying to deal with moneylaundering. Quite frankly, I don't believe the Bank Secrecy Act enacted over 15 years ago has ever been used to its full potential by the government. I don't believe there has been either the training or the resources committed to make a dent in the problem. To some extent I believe the lack of compliance by many banks was a product of poor notification, monitoring and enforcement by the government.

Well, now we have the attention of the banking industry who have paid some major fines in the last year. We also have some examples of criminal cases filed by the Justice Department which we will hear about later today. These are all positive steps and I am certainly willing to work with Chairman Thurmond in moving this year, a narrowly drafted moneylaundering statute that will permit a substantial increase in prosecutions of those individuals making deposits of illegally obtained currency. The need for this legislation has been established, now that there has been some movement by Treasury and Justice to raise the priority of financial investigations as a key to destroying the underpinnings of organized crime and drug traffickers.

Senator BIDEN. I apologize for missing the first part of your statement, sir. Can you tell me, if your statement did not cover it, how widespread in terms of total dollars do you estimate that money laundering is? Have you had any—I realize that it is a difficult thing to estimate or measure, but have you attempted to do that in the Department and, if so, what is your conclusion?

Mr. QUEEN. Well, Senator, the first part of your question probably goes to the nub of the issue and that is that it is extremely difficult to define what some have referred to as the universe, that is the volume of legitimate transactions and then measure those against the volume of all transactions.

We do know, based on the money laundering cases that have been successfully prosecuted and uncovered, that literally hundreds of millions of dollars are annually laundered with criminal intent. Obviously, that is an area of primary concern to the Department of Justice.

In the area of the Bank Secrecy Act, as you are aware, Senator, Treasury's role and area of interest is not restricted to criminal misconduct but is in large measure designed to ensure maximum compliance by the banks so that the data bank will be available to the Justice Department. So our area of inquiry at Treasury is not just limited to the area of illicit money laundering. That is a somewhat vague answer, but it is about as specific as I can get.

Senator BIDEN. I think your answer illustrates the nature of the problem. One of the witnesses before the Organized Crime Commission, a former money launderer, if you will, said, when defining what money laundering was, said, "Laundering money is to switch the black money or dirty money for clean money." And one of the focuses of our concern, as I am sure it is yours, is how much of that "dirty money" becomes "clean money" and in turn has a very corrupting influence upon society as a consequence of the fact that it is no longer dirty but is still controlled by women and men who in fact are not the finest of citizens.

We were told by you and the banking industry last October that banks are more diligent in filing transaction forms and training personnel. I am concerned that the down side of this may mean that even a greater amount of illicit cash will be physically transported out of the United States by cargo and in luggage and by air, and this falls under this transporting of money out of the country, falls under the jurisdiction of the Customs agency which are already swamped and quite unable to cope with this problem. They have enough problem trying to figure out what is coming into the country, let alone what is going out. And so I have two questions for you.

First of all, has the filing of the transaction forms and the personnel training that has been going on by American banks reached the point that you and your Department are sufficiently satisfied that they are being diligent enough?

Mr. QUEEN. Senator, I mentioned I believe just as you were entering the room that the latest figures show receipts of about 60,000 CTR's per week by the Internal Revenue Service, which if annualized is about 3 million CTR's per year.

In calendar year 1984, we had 700,000. In calendar year 1985 it jumped to 1.7 million, and if the current rate continues—I am no mathematician—but we are talking about an astronomical almost geometric increase in the rate of compliance.

It is extremely difficult and we attempted well over 1 year ago to define what we call the universe, that is, how many CTR's should be filed, assuming all banks are in compliance and in complete compliance, and we reached the conclusion that it is very nearly impossible to do that.

So it is difficult for me to take a raw figure like 3 million CTR's——

Senator BIDEN. It is very difficult to do what, to estimate or to comply?

Mr. QUEEN. It is very difficult to estimate, and being unable to come up with the precise number of CTR's that we believe should be generated by a banking industry in full compliance, it is consequently very difficult to measure their known compliance and come up with in effect a clean bill of health for the banking industry.

Senator BIDEN. How do you test compliance? How do you test? Is there any means by which you spot check or have any measure that determines whether or not any particular banking institution is complying?

Mr. QUEEN. Well, there are two fairly—I do not want to say easy—ways, but relatively obvious methods, one of which was directly connected with the Bank of Boston case and that is what amounts to a gross analysis of the CTR activity of a particular geographic area or even an institution. We have the capability of inquiring into the data base by institution or by name and then looking at the volume of CTR's and then simply——

Senator BIDEN. When you say inquiring into the data base, for a layman like me what does that mean?

Mr. QUEEN. Well, we have, as you are well aware, a CTR data bank that was actually created in the first instance by the Internal Revenue Service, now at the Detroit Data Center. It is put on magnetic tape. It essentially computerized all the CTR's. That data is then shared with the customs-supervised computer operation in Virginia.

Senator BIDEN. Excuse me. Now, that data that is put in that data bank, that only has in it those transactions which comply with the law, right?

Mr. QUEEN. Correct.

Senator BIDEN. How do you know, is there any means by which you have to check? Can you go into a bank and go in and determine just by spot checking whether or not there have been deposits that have not gone through the filing transaction form or the personnel of the bank have not followed up on in ways they are supposed to?

Mr. QUEEN. Well, there are two ways to do it. One is to identify a bank that should receive careful scrutiny, and one way to do that is to do some gross numbers checks to see if the number of CTR's appears to be abnormally low for the size of the bank, as in the case of the Bank of Boston.

Senator BIDEN. Right.

Mr. QUEEN. The other method, which goes hand in glove with that, are what amount to routine checks conducted primarily by the bank regulatory agencies, the Comptroller, the Fed and the like, when they go in to conduct their routine surveys of the banks which they do to determine compliance with a whole host of Federal regulations, most of which are irrelevant to the Bank Secrecy Act.

We have in the past few months at main Treasury, in cooperation with all the bank regulatory agencies relevant to this area, worked very closely, and I think quite cooperatively, in establishing a procedure to improve the quality and effectiveness of the bank examination procedures. There now are——

Senator BIDEN. Are they written down somewhere, these new procedures?

Mr. QUEEN. Yes. What we have attempted to do is to come up with uniformity to the extent that it can be done, although the regulatory agencies, as you know, do have slightly differing requirements, but to the extent that we can acquire uniformity across the board, I think we have come pretty close to it and in so doing, of course, we have improved, I believe, the kind of criteria that the bank examiners use to determine compliance by the banks.

That is predominantly a civil function, but if we have reason to believe there is a widespread noncompliance, then of course the matter will escalate beyond the examination.

Senator BIDEN. Can you provide the committee with the data to sustain what you have just said, this new uniformity you seek, can you provide that for the committee?

Mr. QUEEN. I would be glad to.

Senator BIDEN. Do you find that compliance varies based upon region, or do you have reason to suspect—let me put it another way. Are there particular regions of the country where money laundering is more likely to be attempted, to be more specific, drug trafficking in south Florida, does that mean you look more closely at south Florida banks or are those folks so sophisticated that they head out to Omaha or Wilmington, DE, or Cheyenne, WY?

Mr. QUEEN. It is certainly not restricted to the Southeast. Much of the current law enforcement approach—and Mr. Trott and Mr. Weld are better equipped to address the law enforcement aspects at least from the criminal side, than am I, but I think I am correct and on safe ground when I say that much is being done in all regions, with the Drug Enforcement Task Force as an example.

The country is now divided into regions. There is not one geographic region in the United States that is free from the presence and scrutiny of the OCDETF involvement, and those are cooperative investigative task forces populated heavily with Customs, IRS, ATF, FBI, DEA and the like. They are making it difficult for any one region to be insensitive to the criminal impact of money laundering.

Obviously, in the past, without question, the Southeast was the area that was most vulnerable to it, for obvious geographic reasons. Of course, I should add that the Bank Secrecy Act itself and the money laundering which it attempts in some respects to stem is not restricted to narcotics-related activity.

Senator BIDEN. I was not suggesting it was. I was just trying to get a handle on whether or not you, based upon activity in a particular area, have markedly or even mildly different actions you take to determine whether or not the banks are in fact in compliance.

We are talking about, if I am not mistaken, we are talking about transactions that exceed $10,000, right?

Mr. QUEEN. Cash transactions in excess of $10,000, that is right.

Senator BIDEN. Now, some of these—do you take a particular look at transactions that are in excess of that? I mean are there any other—what has your experience told you? For example, we in this committee here are told constantly about drug transactions in the tens of millions of dollars. Mr. Trott, who will testify later, is an expert on that and has told us about these kinds of things in the past—not in terms as it relates to this particular Act, but in terms of the amount of money involved. Are there any red lights that go on in your department or have you indicated to banks when you see—is it unusual to see transactions, cash deposits of $100,000, $200,000, $500,000, $1 million?

Mr. QUEEN. It is not at all uncommon.

Senator BIDEN. Do they mark any characteristics? Is there any pattern that you have begun to see emerge? I mean do folks who money launder phenomenal, staggering sums of money, do they do it in $10,000 transactions or does your experience tell you they do it in variables of $100,000 or——

Mr. QUEEN. Well, there is no one simple answer. There obviously is a large enough problem in money laundering in bundles of under $10,000, so-called smurfing activity, that we are all here today, and that we are seeking provisions to get around the *Anzalone* decision because of believe that money laundering in amounts of less than $10,000 is a serious problem. There is no way to say it represents a particular percentage of the laundering activity, but it is very serious.

If we thought it was only a small portion of the activity, we would not be attempting to promulgate statutes and regulations to avoid that structuring issue.

In the area of extremely large cash transactions, by its very nature the Bank Secrecy Act is designed to create data which can be then analyzed to help us trace illicit activity. Some drug smugglers, through an elaborate scheme of money laundering, shell corporations and the like, are able to process huge amounts of cash which on their face appear to be illicit. That is one of the rationales behind the efforts of the Departments of Justice and Treasury in seeking passage of the Money Laundering and Related Crimes Act, because it is not in the most technical sense illegal for a shell corporation to process an enormous sum of cash, let us say a couple hundred thousand dollars, in one lump, fill out the CTR, but have as its real purpose the concealment of the source of the money, namely narcotics, numbers, or whatever it might be.

The Money Laundering Act and Related Crimes would plug the gap that now exists, namely that you could theoretically comply with the Bank Secrecy Act and still be laundering money. I am not sure, but I hope I have addressed your question.

Senator BIDEN. Let me try it another way. What do you do with these transaction forms? How do they get from you to the law enforcement officer who has the ability to use them to go after people who are in fact in violation of the law?

Mr. QUEEN. In the first instance, the CTR is transferred to magnetic tape by the IRS at the Detroit Data Center. A duplicate copy is then provided by the Internal Revenue Service to our central data bank over here in Franconia. The U.S. Customs Service, which participates very heavily, for example, in the Organized Crime and Drug Enforcement Task Forces, has direct on-line access to the information in the data bank. Consequently, the FBI, DEA, ATF and the like, along with, of course, IRS, have access and also participate through the task forces, with the ability to query the data bank based on any variety of criteria. They can query it based on an institution, the size of a particular transaction, geographic location, or a particular suspect by name, Social Security number and the like. There are a number of ways to enter the data bank so that it can act in two ways.

One, as a method of obtaining evidence on individuals or organizations that are already suspected of activity, or through a more complex analysis, to look at the raw data and attempt to divine from that the identities of possible criminal organizations.

Senator BIDEN. Let me ask you another way. Obviously, there are ways in which law enforcement agencies can access the data bank. Is there any initiative that is taken by you or at the data bank to transfer unsolicited to law enforcement particular transactions that raise concern or interest by you or whomever is processing this information?

Mr. QUEEN. Well, of course, the analysis to date has been largely conducted by the Customs and the IRS people who analyze the data. They have either brought that data to our attention or we have inquired at main Treasury that they access the data bank and provide us particular information.

As a matter of fact, the Bank of Boston case was brought to light in no small measure because of an analysis which was requested by main Treasury of the volume of CTR activity in the Commonwealth of Massachusetts, and from that we extrapolated certain conclusions that led to an IRS investigation.

Senator BIDEN. What triggered that?

Mr. QUEEN. Well, we basically did an analysis of not only the Commonwealth but of——

Senator BIDEN. What triggered the analysis of the Commonwealth?

Mr. QUEEN. Well, it was one of many States we looked at, and we noticed that there was an abnormally low number of CTR's coming from that area. We queried a couple of the larger financial institutions and noticed an abnormally small volume of transactions.

Senator BIDEN. Have you done that for other States?

Mr. QUEEN. We have been making inquiries to attempt to do an analysis of other geographic areas. That data, to get back to your original question, law enforcement organizations within Treasury or outside Treasury have a relatively easy time of gaining access to data and obviously we bring that data to their attention if we believe it raises any reasonable suspicion.

Currently, through our participation in the task forces, a task force group in the field doing an investigation headed up by the FBI, DEA, IRS or otherwise can make an inquiry about either individuals or geographic locations.

Senator **Biden**. What I am trying to get at is it seems to me you have got—it reminds me of when I was on the Intelligence Committee, that at NSA there is a phenomenal volume of information that is picked up, I mean a phenomenal volume of it. It is not violating national security to suggest that there is more data out there than you could possibly imagine. I imagine it would fill the Library of Congress several times over.

The issue is what in heck do you do with it, and what I am still groping for is whether or not, notwithstanding the fact that now the banks appear to be more sensitive to complying with the law, that now it seems as though you have a—first of all, how long does it take to get from the bank, the statement being filled out on that tape you referred to, wherever the devil it is out here?

Mr. **Queen**. Well, currently, because there is a substantial backlog that I referred to, the data bank is queriable probably back to August of this past year.

Senator **Biden**. August 1985.

Mr. **Queen**. Roughly. I am not saying with exact precision but approximately that. Our ideal is to shoot for something around 30 days, and the reason for that being that, the regulation of necessity gives the bank 15 days from the date of the transaction to get a hard copy of that data directly to the Treasury Department, and there must also be a certain amount of processing time.

Senator **Biden**. Well, you probably settle close to 6 months these days. I mean that is not the banks' fault. The banks are not at fault because you are back to August.

Mr. **Queen**. I do not think you could blame the banks for the backlog.

Senator **Biden**. Neither do I. Now, what I am trying to get at is again why the backlog, what is the problem?

Mr. **Queen**. Well, as I mentioned—and I think the statistics, to put it mildly, are awesome. Having gone from 700,000 CTR's in 1984 to, as of this past month, an annualized rate of 3,000,000, that is an enormous increase in compliance which was extremely difficult, in fact I would venture to say impossible, to predict.

Senator **Biden**. You told us that it was going to go up a lot the last time you were here and you told us you were behind then but you—I may be mistaken, correct me if I am putting words in your mouth from your last testimony—my recollection was you told us that, you were behind then, but you were going to catch up even though compliance was on the increase. Now, you have just told us that it is going to increase geometrically from here.

Now, if we are in deep trouble with a backlog now and you have just made a compelling case that it is going to go not only from 700,000 to 3,000,000, and it is going to go beyond that, what are we going to do about it? And here you are telling us you want to close more loopholes, which means more forms which means more compliance, which means greater volume which means—I do not see what use it is, if it is sitting somewhere back in August.

Mr. **Queen**. I did not prognosticate that it would continue to geometrically increase.

Senator **Biden**. What are you prognosticating, so next time we meet we can talk about it?

Mr. QUEEN. Senator, I wish I knew. I honestly cannot predict what it might be, the annualized rate.

Senator BIDEN. It is not going to get any less though, right?

Mr. QUEEN. That is highly unlikely. It is highly unlikely. It is partly a function of the volume of business, but the increase is more a function of increased compliance, rather than an increase in the volume of $10,000 transactions.

In answer to your question of what are we going to do about it, we have—the IRS has added 250 additional people for the purpose of processing these CTR's.

Senator BIDEN. Permanently?

Mr. QUEEN. Yes—well, they will keep them as long as they need them. I mean obviously it will be in direct proportion to the volume of activity. We have arranged to transit about, let us see, I think the number is 200,000-some-odd of the CTR's are on their way to a private computer contractor to backload onto a disk and we hope to do approximately the same volume in very short order.

If we stay approximately at the rate we are now, at 60,000 per week, the IRS advises me that we will be able to process the intake without further slippage. But since that——

Senator BIDEN. What does that mean? That means we will stay 6 months behind or 8 months behind?

Mr. QUEEN. No.

Senator BIDEN. No?

Mr. QUEEN. No. The 5-6 month backlog——

Senator BIDEN. September, October, November, December, January, February, March are 7 months, 6 or 7 months back.

Mr. QUEEN. That is directly traceable to a backlog of about 1.3 million CTR's.

Senator BIDEN. I got that. Now——

Mr. QUEEN. So if I could snap my finger and put them into the computer, probably 5½ months of that backlog would disappear, of necessity.

Senator BIDEN. Right.

Mr. QUEEN. And then what you would be doing is talking about a backlog that is a function of the time between the date of the transaction and the data processing.

Senator BIDEN. I got you.

Mr. QUEEN. So all other things being equal and the river don't rise, we can I believe eliminate the grossest portion of that backlog that we have and thus substantially reduce the time between the transaction and when it can be inquired about on the computer.

Senator BIDEN. OK.

Mr. QUEEN. We will never much get it——

Senator BIDEN. When you all are sitting here with us in January of next year, are you going to be caught up?

Mr. QUEEN. I hope so.

Senator BIDEN. Well, I mean you have obviously got an analysis to suggest whether or not you can. I mean what are you saying to me as a professional? Are you saying to me that in 6 months you will have the 6-month backlog eliminated and you will be down to what you stated as your objective, which is 30 days from the time that the deposit is made until it is gone into the computer. Do you expect to be anywhere near that by January, of next year?

Mr. Queen. I believe so. I am giving you a good-faith estimate or a prognostication that by June of this year, give or take a little bit, we should have the bulk if not all of the backlog eliminated. Now, that is the backlog based on a 1.3 million figure.

If we have an abnormal and unexpected increase in the volume of CTR's received——

Senator Biden. You already told me it was going to be 3,000,000.

Mr. Queen. I am saying if we annualize it out at 60,000 per week, that will come out to about 3,000,000 a year.

Senator Biden. OK.

Mr. Queen. Based on the current rate of intake and based on the manpower we have provided, assuming no change from that 60,000 figure, we believe we will be able, we can keep pace with the current number and then our job for the next few months is to eliminate the backlog.

Senator Biden. I will yield to my colleague in a moment, because I must go make my statement on the Fitzwater nomination before 3 o'clock. But let me suggest to you that I am going to submit a series of questions to you or to your department, if I may, to ask that they be answered in writing. There is only a total of six of them.

[Written questions of Senator Biden follows:]

[Answers not available at press time.]

March 25, 1986

The Honorable David Queen
Deputy Assistant Secretary for Enforcement
United States Department of the Treasury
15th and Pennsylvania Avenue, N.W. Rm 4328
Washington, D.C. 20020

Dear Mr. Queen:

At the conclusion of your testimony at our March 18, 1986 hearing on White Collar Crime, you consented to answer, for the record, additional questions to be submitted by letter. Listed below are several questions I would appreciate you answering for the record.

1. There has been a great deal of criticism by the General Accounting Office and the Organized Crime Commission that the Regulatory Agencies have not been effective or diligent in monitoring bank compliance of the Bank Secrecy Act. How would you respond to this?

2. Do you believe that the regulatory agencies have sufficient personnel to monitor compliance of the Bank Secrecy Act?

3. We were told by you and the Banking Industry last October that the banks are now more diligent in filing transaction forms and training personnel. I'm concerned that the down side of this will mean even a greater amount of illicit cash will be physically transported out of the U.S. by cargo, luggage, and air. This falls under the jurisdiction of the customs agency which is already swamped and unable to cope with this problem. What recommendations does main Treasury have for either additional staff or programs for customs and their financial investigative division specifically?

4. At the moneylaundering hearing last October you mentioned several improvements that Treasury was making that included the establishment of an "Adhoc Treasury Enforcement Committee" and staffing for a new financial office announced last May by Secretary Baker. Can you tell me the status of these two initiatives?

5. As far as I know, the Treasury Department requires only financial institutions to file CTRs, even though authorized by 31 U.S.C. 5214 to require reporting of others involved in those currency transactions specified by the Department. I would like to know if requiring other participants in currency transactions in excess of $10,000 to file reports would further your enforcement efforts?

5a. In your explanation of Section 1 of S. 1335 you state the need for an "attempt" provision in order to eliminate problems caused by the 15-day reporting requirement. I understood that 31 CFR 103.25 (a) imposes this requirement, but am not aware of a provision requiring the Secretary to impose this 15-day waiting period. I would like you to supply this for the Committee.

Your testimony before this Committee has materially contributed to its work. I look forward to receiving your answers.

Sincerely,

Joseph R. Biden, Jr.
Ranking Minority Member

Senator BIDEN. Let me ask my last question before I yield to my colleague from Iowa. Assuming the backlog is caught up any time within the next year and we are running roughly 30 days behind the curve or 30 days from the time of the deposit, I am still not certain of the value of these several million pieces of data on the computer tape as it relates to the ability to apprehend criminals who are not merely violating the technicality of the law in terms of how they deposit money and in what form they deposit it, but getting at the root of it.

Are there any redlights that go on in that computer bank or with you all that says notwithstanding we received no inquiry about this transaction or this series of transactions, we should in fact send this information to whom?

Mr. QUEEN. Without getting into an excessive amount of detail that might be of some value to a money laundering operation, I could tell you that we do not simply wait until the phone rings. It is not like the Maytag repairman sort of sitting there, lonely, wondering when the next call will come in.

We do take a proactive position and we are in the process of spending no small sum of effort and money in the area of artificial intelligence with the very legitimate belief that——

Senator BIDEN. Artificial intelligence?

Mr. QUEEN. That is the ability of a computer program to actually perpetually analyze the data and match things that would not to the ordinary poor soul click as a significant pattern, that is; namely, names or configurations of names, taxpayer identification numbers, Social Security numbers and the like beginning to appear at odd geographic locations and in close proximity of time and the like.

To back up, though, when you asked whether we are in effect getting anything for our effort in the CTR area, I can give you an unqualified yes, we are; we are very much getting our money's worth in the area.

The latest statistics that have come to my attention, and these are just from the Organized crime and Drug Enforcement Task Forces, which, of course, are not the only customers for the data, show that since the task forces were formed, we have charged with title 31 violations alone—and that is the Bank Secrecy Act—319 persons, and 527 charged with title 26, which is IRS-related violations. Overall, because of the OCDE Task Force, 8,491 people have been indicated, and 3,994 people have been convicted. In order to even become the subject of a task force case, you have to be a major trafficker or connected with a major narcotics trafficking or organized crime operation.

So we are talking, just based on the numbers in front of me, of 800-some Treasury-related violations by major narcotics traffickers. I can say, and I think Mr. Trott and Mr. Weld will back me up, that even the nontitle 31 and title 26, cases that have been made by the task forces in large measure could not have been made without the kind of data that the Treasury Department provides. So there are at least 860 reasons.

Senator BIDEN. Well, it may be—and I appreciate your testimony—it may be that we, the committee, might want in a closed hearing for you to come up and tell us in some greater detail the things that if you told us in open session might very well aid and abet rather than diminish.

I must go and make my statement on the floor. I will be back and I yield the floor and the Chair and the gavel and everything else to my friend from Iowa, and I will be back for the next series of witnesses. I think we have a vote close to 3 o'clock.

Thank you.

Senator **GRASSLEY** [presiding]. Without objection, I want to include a statement that I was going to make at the beginning of the hearing in the record right after other opening statements were made.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

Mr. Chairman, I commend you for holding today's hearing on the subject of money laundering as we continue our series of hearings on "white collar" crime.

Money laundering has become a widespread practice where criminals use genuine financial institutions, or other means, to convert crime-related proceeds to seemingly legitimate funds, or assets, thereby circumventing the law, and furthering their criminal activities.

This abhorent practice involves billions of dollars, and therefore has a powerful adverse impact on our nation, as well as the fabric of society, as crime is facilitated and tax dollars are lost.

Although money laundering has been attacked indirectly through various statutes, criminals are succeeding in evading the law and the problem is increasing exponentially.

Legislative measures have been introduced in Congress that attempt to strengthen laws concerning the keeping and reporting of financial records. Although some elements of these bills need further consideration, I support the basic intent of this legislation, which is to plug a number of loopholes that currently allow sophisticated criminals to literally run away with the bank.

Consequently, I look forward to hearing the testimony of today's distinguished witnesses as we examine this growing problem and attempt to adequately address it.

Thank you Mr. Chairman.

Senator GRASSLEY. I have two or three questions that I would like to ask. One of them deals with a problem that we have of getting foreign bank account records that may be involved in money laundering. We have had some new regulations in this area, and probably some success in the Cayman Islands. But I need some sort of analysis from you of what effect these regulations have had on the problem and what else is being done specifically or what can be done to plug major loopholes in this area?

Mr. QUEEN. Senator, the area of involvement with foreign governments is probably more widely handled by the Department of Justice. The Cayman agreement you are referring to was negotiated by Mr. Trott's people.

Senator GRASSLEY. OK.

Mr. QUEEN. At the risk of tripping all over myself, I will defer to him, if that is no problem.

Senator GRASSLEY. I would say that maybe you could answer that for the record, because I will not be able to be here at the time of Mr. Trott's testimony today.

What about the regulations that have been in effect that subject casinos to the Bank Secrecy Act's reporting and recordkeeping requirements? What effect have these regulations had on the problem?

Mr. QUEEN. Well, as you know, Senator, it was approximately late spring of last year, give or take a few weeks, when we put into relatively full force and effect the Bank Secrecy Act reporting requirements on casinos and drew them into the coverage of the act. In the case of the casinos in Nevada, there is an arrangement worked out by which the State of Nevada has a program closely similar to that of the Federal Government. Forms are provided by the casinos to the State and duplicates are provided to the Federal Government, a slightly different arrangement than in New Jersey.

I can say that the volume of CTR's is going up rapidly. Again, as we have had reporting by casinos before, it is very hard to know or to give you any kind of historical background. We are literally just now beginning to get the kind of data and big picture that will assist us in an analysis of the kind of activity that takes place in the casinos.

Suffice it to say that our people at Treasury are of the opinion that 12 to 18 months, preferably 18 months would be the preferable timeframe within which to allow the casinos to come into complete compliance so that we could sort of look back and take a long view of it, because it is almost impossible in this short a timeframe to have made a case, and obviously if one were to be under investigation I would not be at liberty to discuss it in any event.

Senator GRASSLEY. I accept that and I guess if we have to wait, we have to wait, but I am very much interested in that area. Is there any chance of getting any information before another year has evolved?

Mr. QUEEN. I am advised by individuals who are more knowledgeable than I on such details that the number of CTR's filed thus far by casinos is about 20,000, and I was reminded—I should have mentioned this earlier, I do not think this runs afoul of any kind of secrecy—that what we are doing is providing those CTR's with the data on them back to the respective regional offices of the IRS so that they can do an analysis in the field of the individuals and the nature of the cash transactions that take place.

Obviously, the act is not restricted to intentional laundering of money, nor is the act necessarily restricted to any particular criminal activity. The bulk of the kind of areas that we derive potential civil and criminal enforcement benefit from in the casino area is tax-related; that is, individuals who are expending large sums of cash at the gaming tables. When checked, against appropriate IRS data, the reports may reveal that these individuals are clearly not reporting anything like their true income. That is not to say that they are not laundering money. I mean, no doubt, some of that is taking place.

Senator GRASSLEY. I would like to turn to the forfeiture of assets seized, especially in drug-related crimes. Has the problem of proving title in property ever presented itself?

Mr. QUEEN. There is another question where I feel more comfortable deferring to the Justice Department.

Senator GRASSLEY. OK.

Mr. QUEEN. We do have an asset forfeiture mechanism in Treasury. It predominantly now is related to the physical seizure of cash coming into and out of the country, in which case we do not have much of a problem. We have got it and it either was or was not reported.

In the area of physical assets, most of the physical assets that we have seized at Treasury have been conveyances for narcotics and other contraband, and once again it is a relatively straightforward approach. When you attempt to extrapolate the purchase of goods further down the chain, such as real estate and fixed assets with illicit activities, it tends to fall more into the area of the Justice Department and I would prefer to have them answer that.

Senator **Grassley**. I will again ask Attorney General Trott if he would respond to that when he comes to the table, and again I will not be able to be here because of conflicts.

One last question: How effective has the Government been in preventing a large amount of currency that has not been reported from being taken out of the country?

Mr. **Queen**. The Customs Service, which is really the first if not very nearly the only line of defense for the physical smuggling of out-bound currency, has had in effect unannounced and sporadic use of what we call Operation Buck Stop. Obviously, it cannot be used day in and day out in a widespread fashion, but it has been effectively applied sporadically and as recently as within the past month we have had several major currency smuggling operations interrupted, some carrying $2 and $3 and $4 million in small bills out of the country, which in some ways is distressing but in others is heartening because it is indicative of the fact that large-scale money laundering operations or illicit criminal organizations do not feel comfortable processing their money through our banking institutions because of the improved degree of compliance.

Senator **Grassley**. That is the last question I have, and thank you very much.

Mr. **Queen**. You are welcome.

Senator **Grassley**. I would like to call—because of scheduling problems, we have to call Robert Hodges and Samuel Buffone at this time, and I would ask that, because we do have a vote at 3 o'clock, that you summarize your statements. I know it does not give much time, but I will have to beg your indulgence.

STATEMENT OF ROBERT H. HODGES, JR., EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, SOUTH CAROLINA BANKERS ASSOCIATION; AND SAMUEL J. BUFFONE, MEMBER, WHITE COLLAR CRIME COMMITTEE, CRIMINAL JUSTICE SECTION, AMERICAN BAR ASSOCIATION

Mr. **Hodges**. Thank you very much, Senator. We have submitted formal testimony and we ask that it be made a part of the record. We have additional testimony here concerning the operational aspects of this legislation and this issue which we will provide.

I am representing the American Bankers Association. We have testified on this issue in the past, so I will very quickly summarize our position.

I want to make it clear that we are not opposed to this legislation or to the efforts that you are making here in dealing with drug trafficking and organized crime. In fact, we agree that legislation criminalizing money laundering is important and we support that effort.

We do want to make the following points: The law should be drafted so that banks and bank employees know exactly what their duties are under the law. The law should be drafted so that it affords reasonable protection to bank customers who have a right to expect a certain amount of privacy in their financial dealings.

The law should be sensitive to the operational problems and the administrative burdens which would be faced by the banks in meeting the requirements of this law.

Now, we will be glad to meet with the gentlemen who are represented and agencies who are represented here today in putting together effective legislation to accomplish these ends. And, Mr. Chairman, we will be happy to work with the committee in drafting legislation which would draw a proper balance among the interests of individuals in the confidentiality of their financial transactions, the interests of the banks and the banking industry in operational efficiency and also in the protection of their employees, and the interests of all citizens in fighting organized crime.

Thank you, Mr. Chairman.

[The prepared statement and a letter of Mr. Hodges follow:]

STATEMENT
OF
ROBERT H. HODGES, JR.

on behalf of
THE AMERICAN BANKERS ASSOCIATION
on
CURRENCY AND FOREIGN TRANSACTION REPORTING ACT
AND THE PROPOSED CHANGES IN THE RIGHT TO FINANCIAL PRIVACY ACT

Mr. Chairman and members of the Committee: I am Robert H. Hodges, Jr., Executive Vice President and General Counsel of the South Carolina Bankers Association. We welcome the opportunity to again present the views of the American Bankers Association on S.571, S.572, S.1335, and S.1385. The combined assets of the members of our Association comprise approximately 95 percent of the industry total. Our members range from the smallest to the largest banks, and close to 85 percent of them have assets of less than $100 million.

The changes proposed in the Currency and Foreign Transaction Reporting Act and the Right to Financial Privacy Act (RFPA) are issues in which the American Bankers Association has a vital interest.

Dating back to 1970, prior to the passage of either one of these pieces of legislation, we appeared before both Houses of Congress to voice our concern and our support of the two acts. The ABA understands the challenge that law enforcement officials face in attempting to combat drug trafficking and organized crime. The use of financial institutions as havens for drug money is as abhorent to our members as it is to the public in general. However, we must ensure a balance between the legitimate need of law enforcement to have information on potential criminal activities and the need of financial institutions to protect customer records from unlimited government intrusion. These goals can be achieved through open dialogue between the Congress, the Administration and the banking community. This Committee is a logical beginning forum for this process.

As we focus on the proposed legislation, we should analyze these proposals in the light of three critical questions: 1) should proceeds of illegal activities be made a new felony — money laundering? 2) what should be the parameters of this new statute?, and 3) is there a need to amend the

Right to Financial Privacy Act?

THE ADMINISTRATION PROPOSAL

"The Money Laundering and Related Crimes Act of 1985," S.1335, was introduced at the Adminstration's request ("the Administration bill") creating among other things the new crime of "money laundering." In several ways, the Administration bill resembles S.571 and 572 introduced by Senator D'Amato. However, unlike S.571 and S.572, it eliminates most of the current procedural protections accorded customers under the Right to Financial Privacy Act (RFPA).

Under the Administration bill, anyone who conducts, causes to be conducted, or attempts to conduct a movement of funds or a transaction which in any way affects interstate or foreign commerce, 1) with the intent to promote, manage, establish, carry on (or facilitate same) any unlawful activity, OR 2) knowing or with a reckless disregard of the fact that such monetary instruments or funds represent proceeds of any unlawful activity ... shall be guilty of money laundering and subject to substantial fines and imprisonment. The term "conduct" includes, but is not limited to initiating, concluding, or participating in initiating, or concluding a transaction. This crime could require tellers to be capable of determining the character of the customer and the origin of funds, regardless of how remote.

The Secretary of the Treasury's authority to examine records, papers, and other data of the financial institution relevant to the reporting requirements of the Bank Secrecy Act would be expanded. The financial institution could be required through a summons to produce such documents and records at any location within 500 miles of the institution's place of business at its own expense. [The RFPA currently requires the Government to reimburse the financial institution except in cases of voluntary disclosure, discovery procedures, subpoenas issued by an administrative law judge, and in perfecting a security interest. These provisions must be retained as the cost of compliance with record production is steadily increasing.] The Secretary could make the report information available to other Federal and state agencies not only upon request, but also when the Secretary believes such information may be relevant to a matter within the jurisdiction of the other agency.

The criminal and civil penalties for violations of the reporting provisions under the Currency and Foreign Transaction Reporting Act are increased substantially.

The Administration bill also makes dramatic changes to the RFPA, such as repealing the provisions which require the customer to be notified when his or her financial records have been transferred within the Government; removing the requirement that the records obtained under a Federal grand jury subpoena be returned; and the abandoning of the protection of financial records all without showing that the RFPA poses any threat to effective law enforcement.

S.571 and S.572 include many of the recommendations in the October 1984 Interim Report by the President's Commission on Organized Crime. S.572 would make the act of money laundering a criminal offense. Anyone who conducts a single transaction or series of transactions involving monetary instruments using a financial institution with the intent to promote, manage, establish, or carry on any unlawful activity would be guilty of the crime of money laundering. Further, anyone who conducts a transaction or series of transactions involving monetary instruments using a financial institution with knowledge or reason to know that such monetary instruments represent income directly or indirectly derived from any unlawful activity would be guilty of money laundering.

Under Senator D'Amato's bills, the Secretary of the Treasury could delegate his "proposed" authority (as proposed in this bill, not currently available to him) to examine relevant data and records of domestic financial institutions, to summon bank officers and employees to produce material relevant to recordkeeping, and to take testimony on any data relevant to any inquiry under the Currency and Foreign Transaction Reporting Act.

Senator DeConcini has introduced S.1385, which focuses on what has been considered a major problem associated with currency transaction reporting, the use of exemption lists.

The Internal Revenue Service's Examination Division now has authority to review and deny exemptions. However, financial institutions in the past have lacked sufficient guidance from the Secretary of the Treasury and the IRS as to what constitutes full compliance with the exemption requirements. Senator DeConcini's approach would ensure that an institution's exemption list is regularly reviewed by the Treasury. The institution would submit, on a quarterly basis, "a list of customers of the financial institution whose transactions have been exempted." The Secretary would be required to "review and approve or revoke the list of exemptions within 90 days after the date of receipt." If the Secretary fails to notify the financial institution within the time provided, the exemption list would be deemed approved.

This proposal would encourage frequent review of the currency transaction reporting exemption lists. These reviews would guarantee that the lists are used only for their intended purpose: to exclude from the reporting requirements only those customers clearly intended to qualify under the regulations. The Government would be in a better position to recognize an organized crime connection before the financial institution, since most ongoing criminal investigations are unknown to the institutions. This approach is similar to the exemption list provisions in H.R.1474 introduced by Mr. Hughes, Chairman of the House Subcommittee on Crime.

S.1385 would also make anyone who initiates a transaction with the intent to promote unlawful activity or with knowledge or reason to know that the monetary instruments involved in the transaction are derived from unlawful activity guilty of the new crime of money laundering. The "knowledge or reason to know" standard is well settled in criminal law and according to the President's Commission on Organized Crime "is intended to make clear that either a subjective or an objective standard of intent may be chosen for proof..." Senator DeConcini, like Senator D'Amato, recognizes that there is no apparent need to amend the Right To Financial Privacy Act.

Money Laundering as a Crime

The ABA supports making the laundering of proceeds of illegal activities a crime, provided that, at a minimum, specific criminal elements such as intent and scienter are included in the definition. The crime of money laundering must be drafted with precision so as to exact the most effective result. First, the thrust of any newly defined crime of "money laundering" should be on the individual who initiates or is knowingly involved in a transaction with the intent to promote illegal activity or with knowledge that the transaction represents income derived from illegal activity. This definition would affect customers and employees of financial institutions alike.

In addition, it should be noted that related abuses by financial institutions and their employees will continue to be covered under the civil and criminal penalty provisions found in the Currency and Foreign Transaction Reporting Act as well as under 18 U.S.C.2 which makes one responsible as a principal if he willfully causes an act to be done "which if directly performed by him or another would be an offense against the United States." The civil penalties for willfully failing to comply with the currency and transaction reporting requirements include a fine of $10,000 for each violation. Additional civil penalties of up to the amount of the monetary instrument for which the report was required may be imposed on any person not filing a report, or filing a report containing a material omission or misstatement. Each person who willfully violates any of the reporting requirements is also subject to criminal penalties and a fine of up to $250,000 or imprisonment up to five years, or both. If the violations are part of a pattern of illegal activity involving more than $100,000 in a 12-month period, then the criminal penalties are increased to $500,000 or imprisonment for up to five years, or both.

We would like to suggest some new language to the committee relating to an internal audit by the financial institution. Specifically, a section such as the following:

> "No liability for a civil penalty shall be imposed upon a financial institution for a violation of this subchapter or a regulation prescribed under this subchapter if such violation is first discovered by such financial institution and is promptly disclosed by such financial institution to the Secretary or in accordance with regulations prescribed by the Secretary."

This amendment provides that liability for a civil penalty will not be imposed upon a financial institution for violations of the Bank Secrecy Act or regulations thereunder if the financial institution discovers such violations and promptly discloses them to the Treasury Department. The purpose of this amendment is to encourage financial institutions to audit for Bank Secrecy Act compliance and to disclose and report negligent failures to comply with the act. Absent such a provision, financial institutions might conclude that they are better served by not auditing for compliance, since the consequences to the institution would be the same whether violations were discovered in the course of an internal audit or an external examination. Since the amendment will induce financial institutions to ensure full compliance, it will further the general purposes of the Bank Secrecy Act.

Finally, we reiterate that the current civil and criminal penalties coupled with the new crime of money laundering, as it is proposed in Senator DeConcini's bill, should be more than sufficient to meet legitimate law enforcement needs.

Definitions

"Transaction"

Many of the problems in the Administration's bill are found in the definitions section. The term "transaction" would include, for example, any purchase, sale, gift or transfer. This could cover payroll checks and purchases of real estate. Such a definition will, in effect, indiscriminately change many legal banking transactions into suspected illegal activities. We would recommend that only "concealed transactions" be covered. A definition of this transaction should clearly be limited to knowingly received criminally derived property. The definition of "monetary instruments" no longer limits itself to the historical source of laundered funds (e.g., coin and currency). S.1335 would make even personal checks a monetary instrument. S.1335 defines "unlawful activity" to include any state or federal felony. All state felonies involving money would be federalized. Again, this proposal would put state and local laws into the federal government's arsenal.

"Reckless Disregard"

The Administration's definition of money laundering will now cover persons who cannot be shown to have actual knowledge that the monetary instrument received or handled in a transaction is derived from unlawful activity. Rather, anyone who receives or handles monetary instruments in reckless disregard of the direct or indirect source of the funds would be guilty of money laundering.

The standard proposed by the Justice Department has been criticized recently by the Attorney General of California who called "reckless disregard" an unclear standard which will pose compliance difficulties and unnecessarily complicate prosecution of the offense of money laundering. The California legislature has proposed a money laundering statute which is drawn fairly and only covers activity that is engaged in "knowingly."

In a staff memorandum speaking to the standard of reckless disregard prepared for the members of the House Subcommittee on Crime, it was pointed out that:

> Under the reckless disregard state of mind, the government could prosecute any and all employees who receive and cash or deposit a paycheck of a corporation that was guilty of a felony that resulted in a profit to the corporation since their salary is derived directly or indirectly from the proceeds of the crime, e.g., employees of E.F. Hutton, General Electric, etc.

This would be, in our opinion, a clear example of the overbreadth of the proposal. Employees of E.F. Hutton, General Electric and the financial institution would all be guilty of the new crime of money laundering.

The Right to Financial Privacy Act

Under the current Right to Financial Privacy Act, 12 U.S.C. 3403, a financial institution, its officers, employees, or agents may notify the government that it has information which may be relevant to a possible violation of any statute or regulation. In addition, the current RFPA allows for the examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions with respect to the financial institution. We remain unconvinced of the need to amend RFPA because these two sections of RFPA and the recently adopted criminal referral forms make available all the information needed by the Government to effectively combat money laundering.

The Administration Bill proposes dramatic changes to the Financial Privacy Act. S.1335 would amend these current provisions to allow financial institutions to provide financial records to Government agencies if the institution has only a reason to believe in its judgment that they may be relevant to a possible violation of any law, statute, or regulation relating to crimes by or against financial institutions or supervisory agencies. Under the Administration bill, this information may include names and account numbers and other identifying information concerning the "suspected illegal activity." This concept is already established under the 1979 Justice Department Guidelines for the RFPA. Any proposal should specify the information that may be furnished by financial institutions under the term "other identifying information." This proposal also directly repeals the current provision which prohibits a financial institution from relinquishing the actual financial records or copies thereof to any Government authority except in accordance with the specific protective provisions.

The RFPA was enacted to protect customers of financial institutions from unwarranted Government intrusion into their financial records while, at the same time, permitting legitimate law enforcement activity. This protection of individual privacy includes assurances that the customer would be given prior notice of the Government's attempt to gain access to his or her bank records (except under specified circumstances), and that the customer be given the opportunity to contest Government access in court. The Congressional concern over protection of privacy as found in the RFPA postdates the Currency and Foreign Transaction Reporting Act. Congress enacted the RFPA in response to U.S. Supreme Court's decision in U.S. v. Miller, 425 U.S. 435 (1976), which held that customers had no legally recognizable expectation of privacy in account records maintained by a bank. Two years prior to the Miller decision, the Supreme Court in The California Bankers Association v. Schultz, 416 U.S. 31(1974), upheld the CFTR Act against arguments that its recordkeeping requirements infringed on constitutionally protected individual privacy. The Congress endorsed the RFPA as "a substantial compromise between the original version [of the Legislative proposals] and the views of various law enforcement agencies...[who] now believe that privacy protection and effective law enforcement are compatible.

The Administration's amendments to Section 3413 would give the Government the best of both worlds, that is - the Government could receive the actual financial records with little or no effort. No effort would be needed because bankers would be "deputized" and directed to make prosecutorial determinations on what possible violation of law had occurred and judicial decisions on the relevancy of the "evidence." In the event that the deputized bankers failed to exercise their new prosecutorial and judicial authority and did not relinquish the records, the Government could rely on the supervisory agencies who will also be armed with the same blanket "authority." This amendment begins with "Nothing in this title shall apply when a financial institution or supervisory agency ... provides records with reason to believe may be relevant...", the effect would be that all of the protections of the RFPA would be lost if a bank or a supervisory agency turned over actual financial records with a mere reason to believe that they may be relevant to a possible violation of any law relating to crimes by or against financial institutions or supervisory agencies. The act of turning over records would relieve any bank from the "burdens of the Financial Privacy Act." Failure to turn over financial records would put the banks at risk of being charged with the crime of money laundering or other crimes. We feel that the lack of understanding of the RFPA is causing unneccessary friction between the financial institution community and the Administration.

Perhaps, our feelings were best summed up by Mr. R.L. Wood when he appeared before the House Committee on Ways and Means on July 18, 1975, and I quote:

> "The right of privacy of an individual's financial records...in the absence of a known violation of law by the individual involving his finances...is an integral element of the American concept of political rights of the individuals. These rights have been characterized as being protected under our Constitution and under the common law."

In addition, our Association has long supported customer privacy. In 1940, the General Counsel of the American Bankers Association said:

> A bank should, as a general policy, consider information concerning its customers as confidential, which it should not disclose to others without clear justification. Milohnich v. First National Bank of Miami Springs, 224 So.2d. 759, 761 (1969).

The ABA has a long history of supporting the enforcement of the Currency and Foreign Transactions Reporting Act (CFTR Act). The cooperation of the financial industry with Congress and the law enforcement community became evident in the earliest hearings on what is now known as the CFTR Act, when the former ABA President C.C. Sommer told the House Banking and Currency Committee that:

> This Association and commercial banks generally are deeply interested in the apprehension of criminals and limitation of their activities both in this country and abroad. We too are concerned with the public interest aspect of the bill and desire to do everything in our power to protect that interest. Banks have an obligation to their customers to maintain the privacy of their personal financial affairs except in response to subpoena or other regular legal process.

The Association wants to again emphasize that it shares law enforcement's commitment to detecting laundering of proceeds of illegal activities. However, this commitment is founded upon the balance between legitimate societal needs and the preservation of our customers' right to privacy.

Transfer of Records

Under the current RFPA(Section 3412) financial records obtained under the Act can be transferred to other agencies when the transferring agency makes a certification in writing that "there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department." In addition, the RFPA clearly provides that supervisory agencies are free to exchange and disclose examination reports or other information with other supervisory agencies. According to the RFPA, the Secretary of the Treasury is a supervisory agency for CFTR Act purposes.

The Administration bill again proposes to relax the "are relevant" requirement to a weaker "may be relevant" standard, once again replacing objectivity with speculation. The amendment states that nothing in the RFPA would apply when financial records obtained by an agency or Department of the U.S. are transferred to another agency of department if there is reason to believe that the records may be relevant to a matter within the jurisdiction of the receiving agency or department. We must question the need for the expansion of authority when Treasury as a supervisory agency is already permitted to exchange examination reports or other information with other supervisory agencies. Further, the RFPA does not prohibit the disclosure of financial records or information to any supervisory agency. Once again, the RFPA would not apply if the transfer of records was believed to may have been relevant to "a matter" within the jurisdiction of the receiving agency or department. Prudence demands that we define just what "a matter" within the jurisdiction...includes. Notwithstanding the gross deviation from the principles behind the RFPA, this amendment should, at the very least, address itself to legitimate law enforcement activity rather than a mere "matter."

Good Faith Defense

Under current law, a financial institution can notify the Government that the institution has information which may be relevant to a possible violation of any statute or regulation. In addition, a financial institution that discloses financial records "in good faith reliance upon a certificate of compliance with the RFPA by any government authority" will be protected from liability for improper disclosure.

The legislative history of the RFPA emphasizes that "if a bank grants access to records based only on an oral request ... it would not be acting in good faith." (See H.R. Rep. No.13831, 95th Cong., 2nd Session 218 (1978)). The good-faith defense, currently available, is expanded under this Administration bill to include the defense of simply having a good-faith "belief" that such records may be relevant to a possible violation.

Customer Notification

Under Section 3402 of the RFPA, the government may have access to or obtain copies of the financial records of a customer 1) if the customer authorizes such access; 2) by means of an administrative subpoena or summons; 3) in response to a search warrant pursuant to the Federal "Rules of Criminal Procedure"; 4) in response to a judicial subpoena; 5) or in response to a formal written request to the financial institution. The RFPA generally requires the government to give notice to the customer of an order or request for records. However, in order to assist law enforcement efforts, customer notification can be delayed under Section 3409 of the RFPA (12 U.S.C. 3409). Customer notification can be delayed when:

* customer records are disclosed pursuant to customer authorization;
* a financial institution is served with an administrative subpoena and summons;
* records are disclosed pursuant to a search warrant;
* a financial institution has received a formal written request; or
* records pertaining to customer financial transactions have been transferred from one government agency to another.

A delay order may be granted by an appropriate court if the presiding judge or magistrate finds that:

* the investigation conducted is within "lawful jurisdiction of the Government authority seeking the financial records";
* there is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; and
* there is reason to believe that the notice will result in
  a. endangering the life or physical safety of any person;

b. flight from prosecution;

c. destruction of or tampering with evidence;

d. intimidation of potential witnesses; or

e. otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same extent as the other specified circumstances.

The court may grant the requested delay for a period of up to 90 days. The government also has up to ninety (90) days after serving a search warrant to mail a copy of the warrant to the customer's last known address. The government authority may also apply to a court for a further delay in the mailing of the notice of up to 180 days following the service of the warrant. The delay order also prohibits a financial institution from disclosing to the customer that records have been obtained or that a request for records has been made until expiration of the delay period.

The Administration bill repeals the protective provisions which require the customer to be notified when his or her financial record have been transferred within the Government. Customer notification, like several other protections in the Financial Privacy Act, has fallen prey to a lack of understanding and misrepresentation about the current law.

The annual report provided to Congress by the Administrative Office of the United States Courts on the Application for Notice Delay under the RFPA is attached. In the report, it is shown that since the Act's inception, only 30 delay applications have been filed by Federal Government agencies and all 30 were approved by the courts. Before changes are made, shouldn't we all understand why this is not being utilized?

Preemption of State Privacy Laws

Section 3(g) of S.1335 adds a preemption provision to the Right to Financial Privacy that preempts "any Constitution, law or regulation of any state or political subdivision thereof, as well as any administrative or judicial interpretation of such provision, that is not identical to this bill" and "that is more restrictive of disclosure to a Government authority concerning a possible violation of any statute or regulation than the provisions of this title and regulation promulgated thereunder."

While there is a need for consistency among the states in responding to law enforcement inquiries, by preempting state constitutions, state laws and judicial interpretation, the Administration is taking away the right of the state to decide how it will protect the privacy of its citizens. Many states specifically guarantee a right to personal privacy in their constitutions.[1] Others have enacted detailed statutes concerning financial privacy.[2] In Texas, for example, financial institutions are required to give notice to customers prior to disclosure. Customers in Texas are provided with notice and challenge procedures. California requires a depository institution to balance the government's need for the information with the customers' right to privacy.[3] Other states have introduced their own Privacy Acts in the 1986 legislative Session.[4] This confirms our belief that the states want all disclosure by financial institutions of actual records to be only in response to a formal government request.

Conclusion

Mr. Chairman, members of the committee, we hope that our comments are accepted for what they were intended — a call for constructive criticism of the bill and a need for negotiation. The industry I represent has as great if not greater an interest in stemming the flow of money from illegal activities into legitimate business as does any other industry. We believe, however, that merely creating a broad crime of money laundering and removing certain rights to privacy will not fulfill this commitment.

As we pointed out in our testimony, in October before this Committee the government today has access to massive amounts of reports and information from financial institutions and has both the authority and ability to obtain additional information. In 1985 alone, an estimated 1.7 million CTRs were filed with the Treasury. The information that is available and potentially available needs to be put to effective use before changes are made. There has been no indication nor proof that law enforcement needs more access.

Finally, Mr. Chairman, we asked in October that financial institutions, law enforcement officials, and Congress, as well as other interested parties, sit down and discuss what information is available, what information is needed to stop the flow of illegal funds, and how we can utilize this information while protecting the rights of our customers and your constituents. This has not happened and we again call for that commitment. As the Christian Science Monitor stated in a recent editorial:

> We would hope that a compromise might be worked out among Congress, the Justice Department, and financial institutions that, while taking account of the need to maintain propoer regard for civil liberties, also throws the gauntlet down against money laundering transactions.

I will be happy to respond to any questions you may have.

ENDNOTES

[1] Alaska, Arizona, California, Florida, Hawaii, Illinois, Louisiana, Montana, New York, South Carolina, and Washington.

[2] California, Maine, Oregon, and Texas.

[3] At least four states parallel the Federal RFPA (California, Nevada, New Hampshire, and Oregon). Other recent laws on financial privacy on the state level include: Minnesota which prohibits any government authority from gaining access to or copies of the contents of financial records of customers of a financial institution unless the records first are reasonably described and then either the customer authorizes the disclosure, the records become the subject of a search warrant or a judicial or administrative subpoena, or the records are disclosed pursuant to a criminal investigation. The act requires the government authority seeking access to notify the customer within 180 days unless a delay of notice is obtained, and proposals such as H.B.286 in North Carolina which would limit government access to a customer's financial record and provide a delay notice mechanism; and Senate Bill 1014 in New Jersey which is also modeled on RFPA. The North Carolina proposal is a direct result of the concern expressed by residents of a state court decision on financial privacy. An example of the consternation caused by tampering with customer rights can be seen in an attached editorial from the News and Observer in Raleigh.

[4] Missouri H.B. 1622 is similar to the federal RFPA and provides that a government authority may request financial records pursuant to a formal written request. The bill also establishes fines for disclosure by the financial institution in violation of the statute.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

Report of the Director of the Administrative Office of the U.S. Courts on Applications for Delays of Notice and Customer Challenges Under Provisions of the Right to Financial Privacy Act of 1978

This is the sixth report submitted to Congress in accordance with the provisions of the Right to Financial Privacy Act of 1978, Title 12 U.S.C. Section 3421(a). The report covers the period from January 1, 1984 through December 31, 1984. The following text explains the reporting requirements of the statute and provides a summary and analysis of reports submitted by clerks of the U. S. district courts.

Sincerely,

Joseph F. Spaniol, Jr.

Joseph F. Spaniol, Jr.
Deputy Director

April 1985

CALENDAR YEAR 1984 REPORT ON APPLICATIONS FOR DELAYS OF NOTICE AND CUSTOMER CHALLENGES UNDER PROVISIONS OF THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

Reporting Requirements of the Statute

Title 12 U.S.C. Section 3421(a) requires the Director of the Administrative Office of the U.S. Courts to report to Congress on the number of applications by U.S. government authorities under Section 3409 for delay in notifying a customer that access to the customer's financial records has been requested. The Director is also required to report the number of actions initiated by customers under Section 3410 to enjoin a government authority from obtaining financial records. This report includes the number of notices of delay sought; the number granted under each subparagraph of Section 3409 (a)(3); and the number of customer challenges to release financial information to U.S. government authorities.

Summary and Analysis of Reports

Applications by Government Authorities for Delayed Customer Notice

During calendar year 1984 ten applications for delayed customer notice were filed by Federal government agencies. The Federal Bureau of Investigation in the District of Nebraska applied for all ten and was granted a 90-day delay of customer notice.

Table 1 indicates the total number of applications for delayed customer notice filed by government agencies during 1979 through 1984. A total of 30 applications have been filed by various government agencies since the Act went into effect.

All requests applied for under the Act were granted because it was believed that customer notice would result in one of the following actions:

- destruction of or tampering with evidence;
- flight from prosecution; or
- seriously jeopardize an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding.

Table 1
Applications by Government Authorities for Delayed Customer Notice
Pursuant to Title 12 U.S.C. Section 3409
For the Calendar Years 1979 through 1984

Calendar Year	Total Number of Delayed Customer Notice Applications	Number of Delayed Customer Applications		Reason Granted				
		Granted	Denied	A	B	C	D	E
1979 ...	15	15	-	-	14	-	-	1
1980 ...	2	2	-	-	1	1	-	-
1981 ...	2	2	-	-	-	1	-	1
1982 ...	0	-	-	-	-	-	-	-
1983 ...	1	1	-	-	-	1	-	-
1984 ...	10	10	-	-	-	-	-	10

Reason Granted:

(A) endangering life or physical safety of any person;
(B) flight from prosecution;
(C) destruction of or tampering with evidence;
(D) intimidation of potential witnesses; or
(E) otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same extent as the circumstances in the preceeding subparagraphs.

Customer Challenges

Under Title 12 U.S.C. Section 3410, a customer may challenge the right of a government authority to obtain his/her records from a financial institution by filing suit in the appropriate U.S. district court. During 1984 a total of six customer challenges were filed against two government authorities. Five customer challenges were filed against the Securities and Exchange Commission and one was filed against the Secretary of Agriculture. Of the six challenges filed, three were dismissed and three were denied.

A total of 57 customer challenges have been reported filed in U.S. district courts since the Act became effective on March 10, 1979. A review of the data from the civil cover sheets and the court docket sheets has shown that one case reported in Indiana, Northern as pending at the end of 1982 and 1983 was not a customer challenge. This case was filed as a Social Security benefits claim (challenging a decision made by Social Security, not a customer challenge).

In the 1983 report the one case reported in Connecticut as pending at the end of 1983 was denied on January 3, 1984.

NEWS & OBSERVER
RALEIGH, N. C.
D-130,000 S-160,000

AUG-23-8

195 *This newspaper's opinion*

Alarming privacy loss

Under the Right to Financial Privacy Act of 1978, bank customers gained protection against federal agencies' inspection of their financial records without their knowledge. The act required the government to notify a person whose records were sought from banks and to convince a court, if challenged, that the investigation was justified. But North Carolinians have been informed in a disturbing ruling by three judges of the state Court of Appeals that the same kind of restraint doesn't apply to state agencies.

If this rejection of an appeal by North Carolina National Bank is allowed to stand, the General Assembly must pass remedial legislation as quickly as possible. Otherwise, criminal investigators will hold fishing rights to every private bank account in the state with only a nod from a judge needed to exercise them.

This alarming state of affairs stems from a ruling by Judges Clifton E. Johnson, R.A. Hedrick and Cecil J. Hill upholding an order issued by Superior Court Judge Russell G. Walker. He directed NCNB in Guilford County to give the state access to a customer's records and told the bank it must not notify the customer of the examination for 90 days. The court says that the bank had no standing to plead a customer's constitutional right in that situation. But a 90-day gag also removes the individual's chance to argue against the invasion of his records.

The appeals court judges acted essentially on the ground that a corporation's right to Fourth Amendment search and seizure protection is much more limited than an individual's. The obvious problem with this is that the investigators wanted to examine a customer's finances, not those of the bank. Thus the panel's argument that a bank must submit to "exhaustive state scrutiny" in exchange for state recognition rings hollow.

Customers have a right to expect banks to maintain confidentiality about transactions in the absence of obvious or probable violations of law that justify the state's scrutiny of the records. In the NCNB case, however, the state's criminal investigators said only that they "had reason to believe" that their look at the records would be in the best interest of justice. That's not good enough.

In the opinion written by Judge Johnson, the panel does offer a cautionary note. The state, say the judges, should make a more complete statement of the circumstances behind its petition and show how disclosure would serve justice. This still begs the question of whether — perhaps out of mere curiosity or on a hunch — the state should be permitted to dig around in a person's bank accounts. Where do the Fourth Amendment safeguards begin for the customer?

The panel justifies its ruling, in part, with the argument that it's difficult for law-enforcement agencies to get at bank records in the early stages of investigation. Proceedings calling for a grand jury, a finding of probable cause or issuance of subpoenas or warrants are time-consuming and expensive.

Exactly. And that's as it should be. These procedures were written precisely to prevent investigators from poking around in private records willy-nilly and without sufficient cause. If the law permits that sort of thing — and that certainly is an issue for a higher court to decide — then the law, to quote Finley Peter Dunne's Mr. Dooley, "is a ass, a idiot.".

MORNING STAR
WILMINGTON, N. C.

AUG-27-84

Your account: An open book?

Few things contain more private information than your bank account. Anybody who looks through it can probably figure out what you make and from what, what you pay for your house, whether you're making alimony or child support payments, where you went on your vacation, what you give to church or charities — and just about anything else about your life that involves money. And what, pray tell, doesn't?

Obviously, bank accounts can be goldmines for law enforcement officials who suspect somebody of a crime.

Now the state Appeals Court has ruled that the police may go to your bank and demand to see your financial records and not tell you about it for 90 days.

It is particularly hard to agree with that ruling in light of the weakness of the case that prompted it.

The Guilford County district attorney went to North Carolina National Bank and asked to see the records of a customer. No solid reasons were offered to justify the request. The prosecutor merely contended that there was "reason to believe" that snooping "would be in the best interest of justice."

NCNB, to its great credit, at first refused to cooperate. But under court order, it let investigators see the records and appealed to the Court of Appeals.

The investigators, after rummaging through this person's life at their leisure and not telling him about it, filed no criminal charges. *(Sorry, guess you weren't a crook after all. And by the way, you must be crazy to spend all that money on records of ukelele music.)*

Now the Appeals Court has said that banks can be required to let the police into customers' accounts and not tell the customers.

NCNB says it probably will appeal to the state Supreme Court. Good.

Let's hope the state's highest court is more sensitive than the Appeals Court to the rights of the people of North Carolina.

Otherwise, those of us who like to keep our financial affairs private will have to go back to keeping cash under the mattress.

PRESIDENT
ROBERT V ROYALL JR
THE CITIZENS AND SOUTHERN NATIONAL BANK OF S C
COLUMBIA

EXECUTIVE VICE PRESIDENT AND
GENERAL COUNSEL
ROBERT H HODGES JR

South Carolina
Bankers Association

ORGANIZED 1900

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April 4, 1986

Senator Arlen Specter
United States Senate
Committee on the Judiciary
Washington, D. C. 20050

Dear Senator Specter:

Thank you for your interest in my testimony on behalf of the American Bankers Association, before the Senate Judiciary Committee concerning White Collar Crime. You asked for additional comments on the proposed changes in the Right to Financial Privacy Act, and their effect on banks' relationships with their customers. Specifically, you wanted to know whether or not the proposed changes would affect bank policy with regard to the customer's right to privacy.

As you stated, the current Right to Financial Privacy Act permits a financial institution to notify the government when it has information which may be relevant to a violation of law. One proposal would change this "may be relevant standard" to a "reason to believe standard." That is, a bank officer who has a reason to believe that information may be relevant to a violation of law, may turn that information over to the Federal Government. This is in the nature of an exception to the Right to Financial Privacy Act.

Clearly, the changes indicated represent a relaxation of standards for the release of information by banks concerning their customers. This is especially significant when coupled with another change which would permit banks to provide the records themselves when the reason to believe arises. Under current law the bank may notify the government of the fact that it has information concerning a possible violation of law.

Banks have always worked hand in hand with law enforcement authorities, and certainly it is in our interest to cooperate in efforts to control crime. Banks are often the targets of white collar crime, as are many other businesses. However, we want to protect the interests of our employees, as well as the rights of our customers. Most bankers would be concerned about the responsibility of making any determination on a "reason to believe" basis that a crime may have been committed. It would then be their duty to turn over actual documents which may be relevant to a violation of law or regulation.

Our concern is that the natural approach of most bankers in trying to comply with a law such as this would be to err, if at all, on the side of disclosure and release of documents. Again, we want to cooperate with law enforcement agencies in providing the evidence that they need to prosecute criminals. We hope that any new law touching on financial privacy would draw the proper balance between those concerns, and our concern for bank employees and customers. The American Bankers Association will be happy to work with you and with the committee to "tighten" these provisions, and to draft legislation which may relieve some of the concerns that we have expressed.

Sincerely,

Robert H. Hodges, Jr.
Executive Vice President
and General Counsel

cbj

Senator GRASSLEY. Thank you. Proceed.

STATEMENT OF SAMUEL J. BUFFONE

Mr. BUFFONE. Senator Grassley, I will try to very briefly summarize the position of the American Bar Association on behalf of whom I speak today.

The American Bar Association recognizes the pervasive nature of money laundering activities and the importance of combating them. Our recommendations, which have been submitted as part of our written testimony, support the enactment of Federal legislation which will assist Federal law enforcement agencies combating money laundering.

While we believe it is important to provide effective tools to combat money laundering, our review of the proposed legislation has led us to the conclusion that the proposals go much further than is necessary in providing effective tools to combat money laundering.

Our basic position, Senator, is that the primary problem is one of detection. As was illustrated by the testimony that preceded ours this morning, there is a massive amount of data that is accumulating.

Our recommendations go to mechanisms for streamlining the processing of that information and making sure that the information is put into the hands of law enforcement authorities at the earliest possible point so that they will be able to detect and thereby more effectively combat money laundering activities.

Our second recommendation is that there be increased resources in the form of personnel at the Department of the Treasury to enable them to more effectively analyze the data and determine when money laundering activities of a large-scale nature are ongoing.

We have many specific recommendations regarding the proposed legislation and, given the time constraints, I will not detail them now but they are included in our written submission.

Finally, I would like to comment on section 56(i) of the Deficit Reduction Act which requires the reporting of cash transactions in excess of $10,000. It has been the experience of the membership of the American Bar Association that require defense attorneys to report fees received as cash transactions in excess of $10,000 including the identity of the client has a significant chilling effect on the exercise of sixth amendment rights.

We urge this committee, in its consideration of money laundering legislation, to review the applicability of the $10,000 cash reporting requirement to receipt of fees by attorneys.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Buffone follows:]

AMERICAN BAR ASSOCIATION

GOVERNMENTAL AFFAIRS GROUP • 1800 M STREET, N.W. • WASHINGTON, D.C. 20036 • (202) 331-2200

STATEMENT OF

SAMUEL J. BUFFONE

MEMBER,
WHITE COLLAR CRIME COMMITTEE
CRIMINAL JUSTICE SECTION

ON BEHALF OF
THE
AMERICAN BAR ASOCIATION

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING
MONEY LAUNDERING LEGISLATION
AND
CASH TRANSACTION REPORTING PROVISIONS OF
26 U.S.C. §6050I

MARCH 18, 1986

Approved as American Bar Association Policy
by the ABA House of Delegates - February 1986

The House acts only on the recommendation.
The report is provided for background.

AMERICAN BAR ASSOCIATION

SECTION OF CRIMINAL JUSTICE

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

BE IT RESOLVED, That the American Bar Association supports enactment of federal legislation which will assist federal law enforcement agencies in combatting money laundering through the following:

1. Create a new federal criminal offense of "money laundering" which proscribes intentionally and knowingly engaging in financial transactions designed to conceal criminally derived property.

2. Amend the Bank Secrecy Act to provide for faster notification to law enforcement agencies of possible money laundering transactions.

3. Increase substantially the number of personnel available to the Secretary of the Treasury and the Attorney General to investigate potential money laundering transactions.

4. Amend the Bank Secrecy Act to require additional reporting of foreign transactions including transactions not involving currency or monetary instruments which are commonly used to conceal money laundering transactions.

BE IT FURTHER RESOLVED, That the American Bar Association opposes the enactment of proposed legislation dealing with money laundering which would:

1. Create a new crime of money laundering as contained in the Administration's legislation, H.R. 2785, H.R. 2786, and S. 1335, and also in H.R. 1367, H.R. 1945, and S. 572 (99th Congress), or any other legislation which does not contain the requirement that the offense be intentionally and knowingly committed.

2. Create a new crime of Facilitating an Offense as contained in the Administration's legislation, H.R. 2785, H.R. 2786, and S. 1335 (99th Congress).

3. Amend Rule 17(c), Federal Rules of Criminal Procedure, contained in the Administration's legislation, H.R. 2785, H.R. 2786, and S. 1335 (99th Congress), which would authorize a court to direct the recipient of a grand jury subpoena not to notify anyone of the existence of the subpoena.

4. Amend the Right to Financial Privacy Act as contained in the Administration's legislation, H.R. 2785, H.R. 2786, and S. 1335 (99th Congress), to delete the requirement that records obtained from a financial institution pursuant to grand jury subpoena must be returned and actually presented to the grand jury.

5. Create a new crime of Receiving the Proceeds of a Crime as contained in the Administration's legislation, H.R. 2785, H.R. 2786, and S. 1335 (99th Congress).

6. Expand the scope of federal forfeiture law as contained in the Administration's legislation, H.R. 2785, H.R. 2786, and S. 1335 (99th Congress).

REPORT

I. INTRODUCTION

This report and the accompanying resolution was considered by the Council of the Criminal Justice Section at its fall meeting on December 7, 1985. The resolution was developed by the Section's White Collar Crime Committee. This report was prepared by a Subcommittee created in December of 1984 by Marvin Pickholz, Chairman of the White Collar Crime Committee of the Criminal Justice Section, to study the problem of money laundering and to evaluate the various proposals and legislative recommendations on methods of dealing with the money laundering problem.

Money laundering is the process used to conceal the source of illegally obtained funds. In some cases, it is also used to facilitate other crimes such as tax evasion, smuggling and bribery. There is increasing recognition that an effective way to investigate and ultimately prosecute certain types of criminal activity is to focus the investigation on the profits arising from the criminal activity. By investigating the use of illicitly earned profits, it is often possible to identify parties involved in criminal activity who, because of their role in the activity or position in the criminal organization, would otherwise escape detection. This approach has proven to be highly effective in investigating narcotics and organized crime organizations. High level individuals in these types of criminal organizations rarely get directly involved in the substantive criminal activity. Thus, they can often only be linked to the criminal activity through the substantial profit earned from it.

Recognition of the significant role money laundering plays in the operation of criminal organizations has led to a number of proposals designed to increase the effectiveness of federal law enforcement agencies in dealing with money laundering. Legislation to deal with money laundering has been recommended by the President's Commission on Organized Crime, by the Administration and by various members of both the House and the Senate. The Section has reviewed and analyzed the following bills introduced in the House and Senate:

(1) S. 1335 - The Administration Bill introduced in the Senate on June 20, 1985, by Senator Thurmond.

(2) H.R. 2785 and H.R. 2786 - The Administration Bill introduced in the House of Representatives on June 18, 1985, by Representative St. Germain.

(3) H.R. 1367 - A bill introduced in the House of Representatives on February 28, 1985, by Representative McCollum which tracks the recommendations of the President's Commission on Organized Crime.

(4) H.R. 1474 - A bill introduced in the House of Representatives on March 7, 1985, by Representative Hughes.

(5) H.R. 1945 - A bill introduced in the House of Representatives on April 3, 1985, by Representative Hubbard.

(6) S. 572 - A bill introduced in the Senate on March 5, 1985, by Senator D'Amato.

(7) S. 571 - A bill introduced in the Senate on March 5, 1985, by Senator D'Amato.

In addition to reviewing the preceding legislation, the Section has also considered other approaches in dealing with the money laundering problem.

II. RECOMMENDATIONS OF THE SECTION

The Section believes that the most effective way to combat money laundering is to enact legislation that facilitates its detection. As discussed in Section III of this Report, the Section believes that most of the proposed legislative solutions are not an effective response to the money laundering problem and recommends against their adoption.

Analysis of the Interim Report to the President and the Attorney General, THE CASH CONNECTION: Organized Crime, Financial Institutions, and Money Laundering, President's Commission on Organized Crime (October 1984) [hereinafter, the "Interim Report"] reveals that detection of money laundering is a far more significant problem than prosecuting the responsible parties after it is discovered. The President's Commission on Organized Crime has also noted this. See, Interim Report, p. 26. Similar conclusions can be drawn from an analysis of other Congressional hearings and reports dealing with money laundering. Each of the twenty examples of money laundering cited in the Interim Report could be and was prosecuted under existing legislation. The difficulty encountered in commencing the prosecution was in detecting the crime and the associated money laundering in the first instance. This is understandable since money laundering by its very nature is clandestine.

Based upon our review of the Congressional and other reports dealing with money laundering, in virtually all cases, money laundering involves at least one of the four following steps:

1. The use of a foreign transaction or a foreign bank account.
2. Failure to comply with the Bank Secrecry Act reporting requirements.
3. The use of a series of transactions instead of a single transaction to conceal a transaction reportable under the Bank Secrecy Act.
4. Conducting large transactions with individuals and institutions who are not subject to the Bank Secrecy Act reporting requirements.

The Section believes that unless specific steps are taken to deal with these common money laundering devices, effective control over money laundering cannot be achieved.

Analysis of the examples of money laundering cited by the President's Commission on Organized Crime in the Interim Report reveals that the following methods were used to launder funds:

Method of Laundering	No. of Cases	Percent
Use of foreign transaction or foreign bank account	12	60
Use of Casino	1	5
Use of "Front" Business	1	5
Failure to comply with Bank Secrecy Act Reporting Requirements	6	30
Totals	20	100

Other reports on money laundering reveal a similar pattern. According to a report entitled: Drug Money Laundering, S. Hg. 99-8, Committee on Banking, Housing, and Urban Affairs, U.S. Senate (January 28, 1985), another common method of money laundering used particularly by street level drug dealers is the purchase of cashier's checks in denominations of less than $10,000 (the minimum amount requiring the filing of a CMIR). The cashier's checks are sometimes made payable to a fictitious payee and deposited into a foreign bank account.

The Section recommends the following specific steps be taken to increase the ability of federal law enforcement agencies to detect money laundering and prosecute the underlying violations:

1. Amend the Bank Secrecy Act to provide for faster notification to law enforcement agencies of possible money laundering transactions and institute changes in agency procedures to provide for prompt investigation of suspect transactions.

2. Substantially increase the number of personnel available to the Secretary of the Treasury and the Attorney General to investigate compliance with the reporting requirements of the Bank Secrecy Act and to investigate potential money laundering transactions.

3. The Bank Secrecy Act and the administrative regulations adopted pursuant thereto should be amended to require additional reporting of foreign transactions including transactions not involving currency or monetary instruments which are commonly used to conceal money laundering transactions.

COMMENTARY ON RECOMMENDATIONS

1. Amend the Bank Secrecy Act to provide for faster notification to law enforcement agencies of possible money laundering transactions and institute changes in agency procedures to provide for prompt investigation of suspect transactions.

Although the Bank Secrecy Act provides for the reporting of potential money laundering transactions, the effectiveness of this tool has been diminished by the inexcusable length of time it takes for information on reported transactions to reach law enforcement agencies. In some cases, more than two months elapse between the date of the transaction and the reporting of the transaction to a law enforcement agency. As a result, successful investigations into suspected money laundering are frequently impossible because of the staleness of the information. This is particularly true in those transactions which involve fictitious names.

The President's Commission on Organized Crime has described the process by which reported information is made available to law enforcement agencies as follows:

> When financial institutions file CTRs in accordance with current Treasury Department regulations and procedures, it may take the Treasury Department six or eight weeks or longer for the data on CTRs to be processed and made ready for analysis at the Treasury Financial Law Enforcement Center (TFLEC). Treasury Department regulations currently permit financial institutions to file a CTR as late as 15 days after the day on which the transaction occurred. Thereafter, the IRS must process all CTR data at its facility in Ogden, Utah, and transport the input data to a U.S. Customs Service office in San Diego, California, before reporting the data to TFLEC at headquarters. TFLEC analysts and Treasury Department officials may then require additional time for review and analysis of the CTR data. Interim Report, p. 25.

These procedures clearly diminish the effectiveness of the reporting provisions of the Bank Secrecy Act. The President's Commission on Organized Crime has recommended that, to reduce the time required to process and analyze CTR data, the Secretary of the Treasury should consolidate the processing of such data in a single location. Interim Report, p. 57. The President's Commission on Organized Crime has also recommended:

> To expedite the process by which financial institutions can inform law enforcement agencies of specific violations of the reporting requirements under the Bank Secrecy Act, the Secretary of the Treasury and financial institutions should coordinate the implementation of a procedure whereby a financial notation on a CTR or CMIR, as appropriate, to the IRS or Customs officer responsible for inputting such data, and telephone a particular office (such as the IRS compliance officer) to alert it to the contents of the CTR or CMIR. Interim Report, p. 57.

While the President's Commission on Organized Crime's recommendation is phrased to suggest that only violations of the Bank Secrecy Act reporting requirements are to be reported, we believe that what is intended is more prompt reporting of all reportable transactions. The Section concurs in these recommendations. Steps that could be taken to improve the reporting of potential money laundering transactions might include requiring financial institutions to mail reports required by the Bank Secrecy Act and regulations within one business day of the transaction. This could be accomplished by having the bank customer complete and sign a postcard form at the time of the transaction with the identification information verified by the teller. The form could be made subject to the false statement provisions of 18 U.S.C. § 1001 thereby providing a basis for prosecuting a false filing.

Financial institutions might also be required to inform law enforcement agencies of certain types of suspicious transactions within one business day by telephone. The types of transactions required to be reported by telephone could be clearly established by administrative regulation. In this manner, unusual or suspicious transactions, such as large, repeated deposits, could promptly be brought to the attention of responsible authorities. It would be a relatively simple matter to set up an 800 number whereby the contents of the Bank Secrecy Act report could simply be read to a law enforcement official who could make a preliminary evaluation of the information and, if warranted, refer it to the appropriate investigative agency for immediate investigation.

Special procedures could be implemented for dealing with treasurer's checks and cashier's checks purchased by other than established account holders of the financial institution. The Section feels that special treatment is required for treasurer's checks and cashier's checks purchased by non-accountholders because this is one of the most commonly used devices to launder street drug money. Virtually all reports on money laundering cite this method as one of the most commonly used. The process by which money is laundered through the purchase of cashier's and treasurer's checks is simple. An individual, referred to in the drug community as a "smurf," is assigned the task of taking large amounts of currency obtained in street drug transactions to numerous banks to purchase cashier's checks. At each institution, a cashier's check is purchased in an amount less than the current reporting requirement. The cashier's checks, which are the virtual equivalent of currency, are then deposited at another institution without any reporting requirement. In many cases, they are deposited in an offshore financial institution.

The Section believes consideration should be given to implementing procedures for cashier's and treasurer's checks such as reducing the reporting requirement for these transactions to $2000 when purchased by non-accountholders and requiring more than one business day to complete the transaction. By reducing the threshold reporting requirement on these instruments to $2,000, these transactions will be much more difficult to use for money laundering purposes. Most legitimate purchases of cashier's checks by non-accountholders will fall below the $2,000 reporting requirement. By requiring the transaction to take more than one business day to complete, the potential money launderer will be required to make two trips to the financial institution. These procedures coupled with prompt notification will substantially deter money laundering transactions of this type and increase the likelihood of detection and apprehension.

2. Substantially increase the number of personnel available to the Secretary of the Treasury and the Attorney General to investigate compliance with the reporting requirements of the Bank Secrecy Act and to investigate potential money laundering transactions.

Despite the well recognized importance of money laundering investigations, it is clear that insufficient resources are being devoted to them. The Interim Report of the President's Commission on Organized Crime paints an abysmal picture of enforcement efforts in this area. The Bank Secrecy Act, as amended by the Currency and Foreign Transactions Reporting Act, is the principal tool available to law enforcement to detect and investigate money laundering. Under these statutes, the Department of the Treasury has the responsibility for prescribing both the types of transactions that must be reported and the specific information that must be reported. The Secretary of the Treasury also has responsibility for supervising compliance with the reporting requirements. The Secretary has delegated this authority to the following regulatory agencies:

1. The Comptroller of the Currency for national banks and banks in the District of Columbia.
2. The Board of Governors of the Federal Reserve System for all state member banks of the Federal Reserve System.
3. The Federal Home Loan Bank Board for insured savings and loan institutions.
4. The Administrator of the National Credit Union Administration for Federal Credit Unions.
5. The Federal Deposit Insurance Corporation for all other federally insured banks.

6. The Securities and Exchange Commission for brokers and dealers in securities.

7. The Commissioner of Customs for transportation of currency and monetary instruments across national borders.

8. The Commissioner of the Internal Revenue Service for all other prescribed financial institutions.

Despite the large number of agencies assigned to monitor compliance with the reporting requirements on the Bank Secrecy Act, it is doubtful that compliance with the reporting requirements is being enforced. According to the Interim Report:

> Figures on the number of referrals made to the Treasury Department were not available from all participating agencies. The FDIC reported that, as of August 1984, three referrals for civil monetary penalties had been forwarded to the Treasury Department; in 1983, six; in 1981, one; and prior to 1980, three. As of July 1984, the SEC had referred four cases recommending imposition of civil money penalties against broker/dealers, as well as information about patterns of suspect transactions just below the $10,000 reporting requirement in certain brokerage houses. The FDIC and the SEC both report that to the best of their knowledge no penalties had been imposed on the referred institutions.
>
> The Treasury Department has informed the Commission that since the enactment of the Bank Secrecy Act in 1970, it has assessed civil money penalties against four financial institutions. * * * No civil penalty has ever been levied against an individual bank employee for violations of the Act. Interim Report, pp. 24-25.

The President's Commission on Organized Crime discusses a number of reasons for the low number of referrals and penalties. The Federal regulatory agencies responsible for monitoring compliance and reporting violations are primarily concerned with other matters. The bank regulatory agencies are primarily concerned with determining the soundness of the institution under examination. Problems also appear to exist in communications among agencies. However, one problem stands out far above the others: There simply is not enough personnel assigned to the task. See, Interim Report, pp. 18-20.

Problems with lack of sufficient investigative personnel also hamper investigations of suspected money launderers. When investigative resources are concentrated on money laundering investigations such as "Operation Greenback," an intense Treasury Department investigation into money laundering in Florida, dramatic results are achieved. See, Interim Report, pp. 26-27. However, concentrated investigations of this type appear to be the exception rather than the rule. All of the federal investigative agencies have substantial investigative duties in addition to money laundering and their limited resources must be allocated among all of their responsibilities. Consequently, there are not enough personnel assigned to investigate money laundering. Money laundering investigations are "labor intensive." Transactions must frequently be traced through voluminous and complex banking records; a very time-consuming process. Federal law enforcement agencies simply do not have sufficient personnel to conduct this type of investigation and still discharge all of their other responsibilities.

The President's Commission on Organized Crime has recommended that both the Secretary of the Treasury and the Attorney General be given substantial additional personnel to devote to money laundering investigations and Bank Secrecy Act compliance examinations. The Section endorses this recommendation. We believe that increasing the number of personnel assigned to money laundering investigations is the single most effective step that can be taken to combat money laundering.

3. The Bank Secrecy Act and the administrative regulations adopted pursuant thereto should be amended to require additional reporting of foreign transactions including certain transactions not involving currency or monetary instruments which are commonly used as money laundering transactions.

Most large sophisticated money laundering transactions use a foreign account or foreign transaction as part of the laundering scheme. In most cases, this transaction is conducted in a bank secrecy jurisdiction. Money launderers rely on foreign bank secrecy to conceal their transactions. Because of the territorial limits of U.S. jurisdiction, a legislative response to this aspect of the money laundering problem is, as a practical matter, limited. However, a key ingredient of any money laundering scheme is that the laundered funds ultimately be brought back to the United States so that they can be used. In most cases, the money is brought back through conventional banking channels. A reporting requirement, similar to that imposed on domestic currency and monetary instrument transactions would at least alert law enforcement authorities to potential foreign money laundering transactions. An exemption list similar to that used in domestic transactions could eliminate useless reports on established international businesses. The Section recommends that wire transfers of funds from foreign countries and the receipt of letters of credit or similar guarantees of loan repayment be reported.

In the long run, effective control over international money laundering depends on cooperation between governments. While some improvements in this area have been made in the past several years -- most notably, the agreement to exchange information with the Cayman Islands in narcotics cases -- much more needs to be done. Because of the seriousness of the narcotics problem in the United States, it must be recognized that this country is effectively at war with this problem and all of the diplomatic resources and sanctions available to the United States should be brought to bear to obtain international agreements to exchange information, particularly in narcotic cases.

III. COMMENTS ON LEGISLATIVE PROPOSALS

A. Creation of New Offense: "Laundering of Monetary Instruments

1. Recommendation of the Section

The Section recommends the enactment of a narrowly drafted statute to combat money laundering. Specifically, the Section recommends enactment of a money laundering statute that prohibits intentionally and knowingly engaging in financial transactions designed to conceal criminally derived property. The essence of money laundering is the concealment of the source of the funds, and it is this concealment that frustrates effective law enforcement. The enactment of the Section's proposed legislation would deter people from entering into potential money laundering transactions and would provide a means of prosecuting those who did. By retaining the traditional mens rea standard of intentionally and knowingly, it also minimizes the risk of conviction of innocent persons.

The term "criminal derived property," as used in the Committee's recommendation, has the same meaning as it does in H.R. 1474 discussed in section A. 2, below.

2. H.R. 1474

On March 7, 1985, Congressman William Hughes, Chairman, Subcommittee on Crime, House Judiciary Committee, introduced H.R. 1474 which creates the new offense of "Money Laundering." This bill provides as follows:

> (a) OFFENSE.--Whoever knowingly engages or attempts to engage in a financial transaction in criminally derived property shall be punished as provided in subsection (b).
>
> (b) PUNISHMENT.--(1) Except as provided in paragraph (2), the punishment for an offense under this section is--
>
> (A) a fine of not more than $1,000,000 or imprisonment for not more than 5 years, or both, if the offender is an individual; and
>
> (B) a fine of not more than $5,000,000 if the offender is a person other than an individual.
>
> (2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of funds or monetary instrument in such financial transaction.
>
> (c) EXTRATERRITORIAL JURISDICTION. -- There is extraterritorial jurisdiction over an offense under this section.
>
> (d) DEFINITIONS.--As used in this section--
>
> (1) the term 'financial transaction' means the deposit, withdrawal, transfer, or exchange, of funds or a monetary instrument (as defined for the purposes of subchapter II of chapter 53 of title 31) by, through, or to a financial institution (as defined in section 5312(a)(2) of title 31); and
>
> (2) the term 'criminally derived property' means any property constituting, or derived from, proceeds obtained, directly or indirectly, from a criminal offense that is listed in section 1961(1) of this title.

This bill presents a more reasonable, well-balanced approach to money laundering than most of the proposed legislation. By retaining the traditional criminal mens rea standard of "knowingly," it reduces the risk of the conviction of innocent persons. However, this bill will reach transactions other than money laundering transactions and, therefore, the Section does not endorse it.

3. Administration Bill, H.R. 2785, H.R. 2786 and S. 1335

The Administration Bill, H.R. 2785, H.R. 2786 and S. 1335 also contain a new offense of money laundering. The Section opposes the enactment of a new offense of money laundering as defined in these bills. These bills provide:

> Section 1956. Laundering of Monetary Instruments
>
> (a) Whoever conducts, causes to be conducted, or attempts to conduct a transaction involving the movement of funds by wire or other electronic means involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce or conducts or causes to be conducted, or attempts to conduct such a transaction through or by a financial institution which is engaged in, or the activities of which affect interstate or foreign commerce in any way or degree --
>
> (1) with the intent to promote, manage, establish, carry on, or facilitate the promotion, management establishment or carrying on, of any unlawful activity; or
>
> (2) knowing or with reckless disregard of the fact that such monetary instruments or funds represent the proceeds of, or are derived directly or indirectly from the proceeds of, anv unlawful activity shall be sentenced to a fine of not more than $250,000 or twice the value of the monetary instruments or wire transferred funds, whichever is greater, or imprisonment for not more than twenty years, or both.
>
> (b) Whoever conducts, causes to be conducted, or attempts to conduct a transaction described in subsection (a) is liable to the

United States for a civil penalty of not more than the greater of --

(1) the value of the funds or monetary instrument or instruments involved in the transaction, or

(2) $110,000.

(c) As used in this section --

(1) the term 'conducts' includes but is not limited to initiating, concluding, or participating in initiating or concluding the transaction.

(2) the term 'transaction' includes but is not limited to a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes but is not limited to a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(3) the term 'monetary instrument' means coin or currency of the United States or of any other country, traveler's checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

The Section strongly opposes the enactment of the new offense of "Laundering of Monetary Instruments" in the form contained in the Administration Bill, H.R. 2785, H.R. 2786, S. 1335. The Section believes no need has been shown for this new far-reaching criminal offense. The Section believes that the 'reckless disregard' mens rea standard contained in the bill is an inappropriate criminal intent standard. Similarly, the Section also opposes the "reason to know" mens rea standard proposed by the President's Commission on Organized Crime and contained in H.R. 1367, H.R. 1945 and S. 572.

The Section also opposes the Administration Bill and H.R. 2785, H.R. 2786 and S. 1335 because of the broad definition of "unlawful activity" contained in these bills. Unlawful activity is defined in this legislation as any state or federal felony. By virtue of this definition, all state felonies involving money are federalized. This provision destroys the division of responsibilities in law enforcement between the states and federal government that has existed since the founding of the country.

The Section is also opposed to the creation of this new offense because of the expanded authority to conduct electronic surveillance it would grant to federal law enforcement agencies. In the Comprehensive Crime Control Act of 1984, violations of the Bank Secrecy Act were added to the list of offenses for which federal law enforcement agencies could apply for a warrant to conduct electronic surveillance. The extremely broad definition of "unlawful activity" contained in the proposed legislation dealing with money laundering will greatly expand the authority of federal agencies to conduct electronic surveillance. The Section feels this is neither necessary nor desirable.

4. Need for Specific Legislation dealing with Money Laundering

The Section agrees there is a need to strengthen, simplify and streamline statutes relating to money laundering. However, the Section questions whether any compelling need has been demonstrated for the passage of the legislation as sweeping as that proposed by the Administration. As noted earlier in this report, the major problem with money laundering has been its detection, not prosecution of it once it has been discovered. Existing statutes more than adequately provide the basis for prosecuting money laundering. The following is a list of statutes applicable to money laundering which appears in a monograph published by the Narcotics and Dangerous Drug Section, Criminal Division, U.S. Department of Justice, entitled "Investigation and Prosecution of Illegal Money Laundering," Chapter 5, pp. 100-101:

> I. Statutory Violations Utilized in Illegal Money Laundering Investigations
>
> A. Pertinent Statutory Provisions
>
> The following is a list of the primary offenses utilized in Title 31 investigations and prosecutions:

(1) Title 18 offenses

a. Section 1001 (false statement and concealment of material facts);

b. Section 1005 (false bank entries);

c. Section 1007 (false statements to the FDIC);

d. Section 1014 (fraudulent loan applications);

e. Sections 1341 and 1343 (mail and wire fraud);

f. Section 1952 (ITAR);

g. Section 1961, et seq. (RICO); and

h. Section 371 (conspiracy to commit a specific violation or to defraud the United States).

(2) Title 26 offenses (related to the obtaining of income from narcotics sales or other sources and the failure to report or to falsely report this income).

(3) Title 21 offenses (related to the importation, manufacture, sale and possession of narcotics with intent to distribute; conspiracy; and continuing criminal enterprise).

(4) Title 31 offenses

a. Section 5313(a) (currency transaction reports at financial institutions involving cash or equivalent over $10,000);

b. Section 5316 (currency or monetary instrument reports at the United States border involving the transportation of

> cash or its equivalent over $5,000 [now, $10,000]);
>
> c. Section 5321 (foreign bank account reports);
>
> d. Section 5322 (penalties); and
>
> e. 31 C.F.R. Part 103 (regulations concerning currency reporting except sections 103.31 - 103.37).
>
> (5) Title 12 offenses (relating to the recordkeeping requirements pertaining to persons having interests in foreign financial accounts and to financial institutions in Sections 1829b and 1951 et seq. and regulations in 31 C.F.R. Secs. 103.31 - 103.37).
>
> The above statutes and regulations are those most frequently involved in narcotics-financial cases. Perjury, obstruction of justice, bribery, extortion and other offenses, may also be involved. (Footnotes omitted)

As a footnote makes clear, the use of the above-cited statutes is not limited to money laundering related to narcotics violations:

> While this chapter does not deal directly with the financial aspects of cases that involve federal violations which are not related to narcotics violations or with any state or local offenses, it should be clear that the use of the Title 12, 18, 26, and 31 offenses described herein can be used in conjunction with the investigation and prosecution of activities such as illegal gambling, arson, bribery, extortion, stolen property, weapons violations and labor violations in addition to legally generated money laundering schemes devised to evade paying taxes or to distort net worth in divorce proceedings.

B. Creation of New Offense - Facilitating an Offense

The Administration's proposed money laundering bill would create a new crime of "Facilitation" by adding an additional subsection to Title 18, U.S.C. § 2, the Aiding and Abetting Statute. The proposed new subsection is as follows:

> (c) Whoever knowingly facilitates the commission by another person of an offense against the United States by providing assistance that in fact is substantial is punishable as a principal.

The Section is opposed to the creation of this new offense. The proposed new crime of facilitation is a statute of broad general applicability not limited to money laundering violations. The need for such a broad new statute has not been demonstrated. The Honorable Jay B. Stephens, Associate Deputy Attorney General stated, in testimony before the Committee on the Judiciary, Subcommittee on Crime, on July 24, 1985, that this new statute was needed to reach the situation where an individual, for a fee, took currency that he knew was derived from a drug transaction and exchanges it for cashier's checks which he then returns to the drug dealer. No new statute is needed to deal with this situation. This situation can easily and successfully be prosecuted under existing federal law. Both the conspiracy statute (18 U.S.C. § 371) and the aiding and abetting statute (18 U.S.C. § 2) are applicable to this situation.

The Section also opposes enactment of this new statute because it is designed to inflict criminal punishment upon conduct that does not rise to the level of purposeful assistance required in the aiding and abetting statute. The proposed facilitation offense is a dangerous departure from the well established concepts of both legislation and case law which have recognized that knowledge of the commission of a crime, coupled with association with the criminal is not a sufficient basis for a criminal conviction. See, United States v. Roberts, 619 F.2d 379, 383 (5th Cir., 1980).

C. Amendments to Statutes and Rules of Criminal Procedure Dealing With Grand Jury Practice

1. Amendment to Rule 17(c), Federal Rules of Criminal Procedure

The Administration bills would amend Rule 17, Federal Rules of Criminal Procedure, to expressly authorize a District Court, upon application of the government, to order a person to whom a subpoena is directed not to notify anyone of the existence of the subpoena for a specified period of time. Since this provision would be added only to subsection (c) of Rule 17, it should apply only to subpoenas duces tecum, but not to subpoenas (governed by subsection [a]) solely for the attendance of witnesses. This limitation was clearly intended by the drafter of the bill, as reflected in the further provision that the order be issued only if the court determines that "there is reason to believe that the books, records, documents, or other objects designated in the subpoena are relevant to a legitimate law enforcement proceeding . . ." (Emphasis added). The court must also determine that there is "reason to believe" that notice to others of the existence of the subpoena would endanger any person, or result in flight, destruction of evidence or intimidation of witnesses, or otherwise impair the investigation or trial.

The Section believes that while it is appropriate in certain limited cases to order a grand jury subpoena respondent not to disclose the existence of a subpoena to a putative defendant, the proposed legislation is much broader than required to achieve this goal and potentially could infringe on substantial rights of both the putative defendant and the subpoena respondent.

The Administration bill would direct the subpoena respondent "not to notify any other person of the existence of the subpoena." Under this proposed statute, a witness would be prohibited from even consulting his own attorney regarding the subpoena. The Section is of the opinion that the prohibition against a witness consulting with his counsel regarding the subpoena is unconstitutional and a violation of the fundamental rights of the witness. The Section is opposed to any nondisclosure statute which burdens either the accused or the witness's right to counsel.

Although a nondisclosure order is most likely to be sought at the grand jury stage, the proposed amendment is not so limited, and could be invoked to bar disclosure of trial subpoenas as well. The Section believes that the imposition of a nondisclosure order with respect to a trial subpoena in any but the most extraordinary circumstances would unfairly hamper a defendant's ability to prepare a defense and confront the witnesses against him. The Section is opposed to any nondisclosure statute which is applicable to trial subpoenas.

Entry of a nondisclosure order seriously impairs the ability of a defendant to prepare his defense. Even in the grand jury stage of criminal proceeding, it is necessary for a putative defendant to be preparing his defense. In complex criminal cases, it is, as a practical matter, essential that the defense preparation begin during the grand jury stages because the time limitations imposed by the Speedy Trial Act make it impossible to prepare the defense between indictment and trial. In most cases, the putative defendant is also offered the opportunity to testify and present his defense to the grand jury Knowledge of the case and evidence is essential if the putative defendant is to make an intelligent choice of whether to testify or not testify. Consequently, the Section opposes the proposed amendment to Rule 17(c).

2. Amendments to the Right to Financial Privacy Act

Subsection 3(f) of the Administration Bill deletes a provision in the Right to Financial Privacy Act that requires that financial records obtained from a customer from a financial institution pursuant to a grand jury subpoena must be returned and actually presented to the grand jury. The purpose of this provision according to the Administration's line-by-line analysis is that this unique requirement for physical presentation of documents to the grand jury is burdensome and costly. It also states that it serves no legitimate privacy interest because other provisions in the Right to Financial Privacy Act regarding grand jury records and Rule 6 of the Federal Rules of Criminal Procedure adequately protect unauthorized use of the subpoenaed records.

The Section opposes the enactment of Subsection 3(f) of the Adminstration Bill. The use of grand jury subpoenas and judicial process to obtain records for the use of prosecutors and investigative agencies is a well recognized abuse which has been condemned by the courts. See, United States v. Thomas, 320 F. Supp. 527, 530 (D.D.C, 1970) (prosecutor ordered to "cease sending to prospective witnesses . . . before the trial date any form which includes the word 'Summons' or any derivative thereof or which in its format and language resembles an official judicial subpoena or similar judicial process or which conveys the impression that non-appearance is subject to sanction . . ."). It has also been held improper for a prosecutor to arrange for the issuance of a proper subpoena for the sole purpose of interviewing a witness personally. See, e.g., In re Lopreato, 511 F.2d 1150 (1st Cir., 1975); Durbin v. United States, 221 F.2d 520 (D.C. Cir., 1954). The grand jury is the constitutionally created independent body which stands between the accusing government and the citizen. Enactment of legislation which suggests that the grand jury process can be used for other than grand jury purposes degrades the legitimate function of the grand jury and turns it into an arm of the prosecution.

D. Creation of New Offense: "Receiving the Proceeds of a Crime"

Section 8 of the Administration Bill would create a new offense "Receiving Proceeds of a Crime." The proposed statute is as follows:

> Whoever receives, possesses, conceals, or disposes of, any money or other property which has been obtained or attempts to receive, possess, conceal, or dispose of, any money or other property which has been obtained in connection with a violation of any law of the United States for which the punishment may extend to imprisonment for more than one year; or brings or transfers into the United States any money or other property which has been obtained in connection with the violation of any law of a foreign country concerning the manufacuture, distribution, or any other form of trafficking in any substance listed in the current schedules of controlled substances established pursuant to Section 202 of the Controlled Substance Act (21 U.S.C. 812) for which the punishment under the law of the foreign country may extend to imprisonment for a period of more than one year, knowing or believing the same to be money or property which has been obtained in violation of law, shall be imprisoned for not more than ten years, or fined not more than $250,000 or both.

The Section is opposed to the enactment of the new statute dealing with receiving the proceeds of a crime. The Section specifically objects to the *mens rea* standard of the bill, "knowing or *believing the same*" to be property obtained in violation of law. This statute would allow conviction on the impossibly subjective test of the "belief" of an accused, a standard which invites the conviction of the innocent.

The Section is also opposed to the enactment of the new offense of Receiving the Proceeds of a Crime as presently drafted because of its likely infringement upon the Sixth Amendment right to counsel. Under the proposed legislation, it is unlikely that an attorney could accept a fee from a client who had possibly engaged in criminal activity. Under the impossibly subjective standard of *believing*, any attorney could be accused of a felony merely on the basis of his receipt of fees from a client with the only issue at trial being what the attorney believed about the source of the client's money. Consequently, the right to the defense by counsel of one's choice will effectively be destroyed by enactment of this legislation.

E. Forfeiture of "Laundered" Funds

Several of the proposed bills including the Administration Bill, H.R. 2785, H.R. 2786, and S. 1335, contain forfeiture provisions which broadly expand the scope of the current federal forfeiture laws to cover all state and federal felonies. The Section strongly opposes enactment of these forfeiture provisions. The widespread statutory authority for civil and criminal forfeitures under current law raises substantial doubts about the need for extending these sanctions to these new, and untested, criminal offenses. Ample statutory authority exists for civil and criminal forfeitures for violations of many current federal offenses. See, e.g., 18 U.S.C. § 1963 (RICO, which includes currency reporting violations as a predicate offense); 21 U.S.C. § 853 (all drug offenses); 21 U.S.C. § 881 (civil forfeiture for drug violations); 31 U.S.C. § 5317(b) (civil forfeiture for illegally transporting currency and monetary instruments).

The Section also believes that the proposed forfeiture legislation will unduly infringe on the Sixth Amendment right to counsel and represents an unwarranted increase in criminal penalties. As presently drafted, the forfeiture provisions contain many ambiguities which will place an unwarranted additional burden on the Federal Judiciary.

The forfeiture sanctions in the proposed legislation contain many statutory ambiguities. The proposed criminal forfeiture provisions of the Administration Bill, S. 1335, H.R. 2785 and H.R. 2786, contain a new definition of forfeitable property geared toward the new substantive offenses in these bills. The general description of forfeitable property as "any money or other property involved in such an offense" fails to identify what is the required nexus between the defendant, the offense, and the property. For example, does "property involved in an offense" include only property actually used to violate these offenses? A broad interpretation of the flexible phrase "involved in" might lead a court to conclude that a defendant's entire bank account, mortgage, stock, or equitable interest in an asset would be subject to forfeiture regardless of the nexus between the property and the defendant's criminal conduct. Under this interpretation, a $10 deposit, for example, would render an entire bank account forfeitable. The Section believes such a result is unjust and inequitable.

Application of the flexible phrase "involved in" to the classic money laundering scheme also highlights the imprecise fit between the term and the targeted offense. If a bank teller accepts a deposit of illicit funds, these funds are "involved in" a substantive offense but they are also not the teller's funds to forfeit. If deposits are the targeted evil, then the threat of a prison term is the only sanction available against the teller. Of course, current forfeiture law would apply with full vigor to the depositors' illicit monies.

In a similar manner, the additional description of forfeitable property as that "which represents the proceeds of or which is traceable to such money or property" is equally ill-phrased. If Congress wants to reach the "proceeds" of illicit activity, it can do so by using the word "proceeds." See, e.g., 18 U.S.C. § 1963(a)(3); 21 U.S.C. § 853(a)(1). Adding the prefatory words "which represents the" can only lead to ambiguity as to what Congress has attempted to describe. Additionally, the proposed statute's listing of property "which represents the proceeds" as an alternative to property "traceable to such money" raises a fundamental question as to the meaning of "proceeds" in the first place.

The relation back provisions of the proposed legislation also create new ambiguities. The relation back doctrine, which establishes the legally operative point of title transfer from the defendant to the government, is triggered by the "commission of the act giving rise to forfeiture." 21 U.S.C. § 853(c). The proposed money laundering offense, however, is predicated on the use or attempted use of a financial institution as a conduit for funds emanating from "unlawful activity." If the unlawful activity is considered the "act giving rise to forfeiture" then title vests in the federal government from the operative date of every state and federal felony offense. Conversely, if the use of the "financial institution" constitutes the "act giving rise to the forfeiture," then some clarification of the triggering financial event (i.e., deposit, withdrawal, extension of credit, etc.) would appear necessary. Again, the ambiguity is created not by the doctrine itself but rather by its wooden application to a broadened class of criminal conduct without reference to the enforcement needs that inspired the criminal offense in the first place. All of these ambiguities are not contained in the current criminal forfeiture laws.

The "substitute asset" provisions of the proposed legislation are also extremely troublesome. These provisions are even more ambiguous than those regarding property forfeitable as a direct result of the defendant's criminal conduct. There are serious constitutional problems with this portion of the proposed legislation. A similar (although not as broad) substitute asset provision was deleted by the Conferees for the Comprehensive Forfeiture Act of 1984. See, Conference Report, No. 1159, 98th Cong. 2d Sess. 419 (1984). The House Report rejected the concept of substitute assets forfeiture and noted the similarity of the concept to the constitutional prohibition against forfeiture of estate. The Report stated:

> At the present time the proposed 'substitute asset' provision appears to be ill-advised, unworkable and the need for it has not been substantiated. Any attempt to forfeit 'substitute assets' which has no nexus to the crime 'in personam' forfeiture is a giant step in the direction of 'forfeiture of estate' and would needlessly raise constitutional questions which could jeopardize successful prosecutions under this bill for years to come.

H. Rep. No. 845, Part I, 98th Cong. 2d Sess. 12 (1984). The House and Senate Conferees on the Comprehensive Crime Control Act of 1984 apparently agreed with this assessment; the "substitute assets" provision in the Comprehensive Forfeiture Act was deleted. Wholly apart from whether the imposition of "substitute" forfeiture penalty constitutes a prohibited forfeiture of estate, the imposition of criminal forfeiture in a criminal prosecution on assets unrelated to the defendant's criminal conduct raises substantial questions of due process.

The proposed "substitute assets" provision set forth in the Administration Bill, S. 1335, H.R. 2785 and H.R. 2786 goes even further than the prior substitute assets language previously rejected by the 98th Congress. Under the proposed "substitute assets" language, mandatory forfeiture is imposed not only for the affirmative acts of a defendant which diminish the assets available for forfeiture, substitute assets can be forfeit as a result of the defendant's failure to act in a way which maximizes the assets available for ultimate forfeiture. Thus, the defendant will be placed in the incongruous position of being a trustee or fiduciary to the government's unsecured claim of title from the moment of the operative criminal act. Enactment of this proposed legislation will require the federal judiciary to engage in a historical analysis of the relative success of the defendant's investment strategy for purposes of determining the defendant's current forfeiture liability.

For the preceding reasons, the Section strongly recommends against the adoption of the proposed expanded forfeiture sanctions.

Paul B. Johnson
Chairperson

February, 1986

AMERICAN BAR ASSOCIATION

SECTION OF CORPORATION, BANKING AND BUSINESS LAW

CONSIDERATION OF THE RECOMMENDATION OF THE SECTION OF CRIMINAL JUSTICE ON PROPOSALS TO CONGRESS FOR COMBATTING MONEY LAUNDERING

This Commentary summarizes the discussions by the Section of Corporation, Banking and Business Law at its Mid-Winter Meeting on January 18, 1986, concerning the request from the Section of Criminal Justice of the American Bar Association to support that Section's Recommendation on Money Laundering ("Recommendation").

The Section of Corporation, Banking and Business Law ("Section") agrees with the general tenor of the Recommendation and with many of the positions set forth in the Report accompanying it ("Report"). There are specific areas in the Report, however, with which the Section has problems.

As defined in the Criminal Justice Section's Report, "money laundering" is defined as the

> process used to conceal the source of illegally obtained funds. In some cases, it is also used to facilitate other crimes such as tax evasion, smuggling and bribery.

The Section of Corporation, Banking and Business Law shares the common concern of the law enforcement community and others over the use of the payment system of this country to further the expansion of criminal conduct and to hide evidence of criminal activity through the use of sham transactions, agents, and other devices which are designed to shelter the fruits of illegal activity. For this reason, the Section supports the general concepts embodied in the Section of Criminal Justice's Recommendation. This support of the Recommendation, however, does not embrace all details of the accompanying Report.

On page 7 of the Report under the subheading of "Commentary on Recommendations," there is a provision that the Bank Secrecy Act be amended to provide for faster notification of money laundering transactions. The Report suggests that the present reporting system, which calls for reports to be filed within 15 days, be changed to a one business day standard and that in certain "suspicious transactions" a telephone notification be given within one business day of the transaction. Also a postcard notification procedure is suggested.

From our experience and contacts with various financial institutions, it is not believed that a one day reporting requirement is feasible and that it would result not only in enormous operating burdens and costs which appear to exceed the benefit contemplated, but it would also be extremely difficult, if not impossible, to achieve. The current regulations specifying a 15-day reporting period were negotiated earlier with the financial institutions based upon operating restraints. The Report states that there have been instances of reports being submitted long after the present reporting period. There is no indication that this is a wide-scope problem, nor is there a showing that late reporting is a problem that cannot be cured under present regulations through normal enforcement efforts.

In the absence of more specific evidence supporting the shortened notification period, we feel that the increased reporting burden and costs would not warrant the change of reporting periods.

The reporting of "suspicious transactions" within one business day by telephone also has inherent problems. The determination of what constitutes a "suspicious transaction" cannot normally be made at the input level of these transactions and has to be reviewed against the background of the transaction, the relationship of the customer with the institution (if known or can be ascertained), and a judgment decision by supervisory personnel who are more experienced than an input clerk who is trained to handle a large volume of items but not to make value judgments. This appears to be a necessary division of labor within a financial institution which enables the operating process to work. A one day reporting requirement would be unfeasible and the subjective judgment of "suspicious transactions" obviously is a difficult one.

Additionally, the "suspicious transaction" proposal in the Report may raise major problems with privacy considerations and may cause a conflict with the Right to Financial Privacy Act (12 U.S.C. 3401, 3402).

The postcard notification suggested in the Report would not relieve the reporting burden that currently exists since a supervisory review must be made and a paper trail of the reporting to the proper governmental authority would have to be maintained by the reporting institution. Reactions from inquiries we have made are that the current reporting method is generally adequate for its purpose and that nothing would be achieved with a postcard reporting mechanism since the operating procedures would not materially change and might become somewhat cumbersome.

The Report calls for a new threshold reporting standard of $2,000.00 to be applied to cashier's checks when purchased by non-accountholders and which require more than one business day to complete the transaction. The determination of whether or not the purchaser is a non-accountholder would require financial institutions with their branch systems to have the capability gain immediate access to a bank's multiple account files so that the report could be made. Very few banks have computer systems which integrate customers' files enabling them to make an automated review of their overall relationships. Such systems are very expensive to create and the maintenance and updating cost is equally expensive. This proposal would result in a manual review of reportable cashier's checks in the banking system and would create a large reporting burden, both in operations and in cost. Additionally, a surveillance system of this type could be easily avoided. For example, to avoid the reporting threshold, a $2,000.00 cash transaction would be easy to do to escape detection.

On page 13 the Report recommends that reporting requirements extend to wire transfers of funds from foreign countries, for letters of credit and for similar guaranty-type instruments. Exemptions would be provided for "established international businesses." If a major percentage of these transactions did not qualify for the exemption, the reporting burden, cost, and flow of paper would be enormous. Even if they did qualify for non-reporting, the monitoring, cross-checking, and review process could still be onerous. It is believed that one major bank receives as many as 9,000 international wire transfers a day, which, when compounded with the volume from the total banking industry, would dangerously narrow the existing bottlenecks in the regulatory mechanism (which, from the Report, is a major delay problem with present volumes). For letters of credit the problem would be similar. It is believed that over the last four years the Department of Commerce averaged approximately 30,000 boycott reports a year, of which letters of credit were a large percentage. Of the total number of letters of credit which flow through the American banking system each year, so-called boycott transactions would be a very small portion of the total. The number of reports of letters of credit arising from this proposal would be huge, with resulting cost and management problems vastly increasing. Obviously, what is needed is the striking of a balance between the need of government to know and the ability of the reporting institutions to manage and to support the cost and reporting overhang.

There is no question that international cooperation is a critical cornerstone of controlling money laundering. This requires sourcing foreign based information which is an area of extremely delicate negotiations presently going on between countries like Switzerland, England, France, and Germany, which have very restricted transborder data flow laws based upon their concerns over confidentiality and privacy. These laws presently raise significant compliance obstacles for financial institutions in responding to requests for information domiciled in their foreign branches. Until such time as diplomatic negotiations can resolve the restrictions on disclosures in laws of given foreign countries, requirements of U.S. law mandating a foreign or domestic bank to produce records and information maintained in an office or branch outside the United States will create impasses for which the courts have not yet developed an intelligent or practical resolution. Evidence of these problems is clearly of record in cases which have been decided or are currently pending in the states of New York and Florida.

It would appear that placing further legislative mandates in an area which we believe is already under substantial international strain may be counterproductive at this time. Both England and France have enacted "blocking" statutes to prevent U.S. courts or agencies from reaching data held in those countries even if held by a branch of a U.S. bank. Hong Kong courts have issued orders prohibiting the disclosure of certain information deemed protected by their privacy laws, and Canada has pending before Parliament legislation which would be similar to the English "blocking" statutes.

Again, the Section supports the general concepts contained in the Recommendation, but is not able to support specific suggestions in the accompanying Report which are described in this Commentary.

AMERICAN BAR ASSOCIATION

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STATEMENT OF

E. E. EDWARDS, III

CHAIRPERSON,
DEFENSE FUNCTION COMMITTEE
CRIMINAL JUSTICE SECTION

ON BEHALF OF
THE
AMERICAN BAR ASSOCIATION

BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE

CONCERNING
CASH TRANSACTION REPORTING PROVISIONS OF
26 U.S.C. §6050I

June 5, 1985

Mr. Chairman and Members of the Committee:

My name is E. E. Edwards, III. I am a trial attorney and partner in the law firm of Edwards, Turner and Thompson in Nashville, Tennessee. I appear before you today on behalf of the more than 315,000-member American Bar Association.

Currently, I serve as Chairperson of the ABA Criminal Justice Section's Defense Function Committee. The Criminal Justice Section is one of two Sections within the Association that have been asked by the ABA House of Delegates to implement the position that I will articulate in this statement.

The American Bar Association includes within its organization a diverse array of law practice disciplines. Some of the Sections representative of these disciplines include "Criminal Justice," "Corporation, Banking and Business Law," "Real Property, Probate and Trust," and "Taxation."

All segments of the justice system are also represented in the Association. It includes judges, prosecutors, defense attorneys, academics and others.

In February 1985, the American Bar Association adopted a policy expressing concern about the ramifications of recently enacted 26 U.S.C. §6050I. Other organizations have passed similar resolutions. These include, for example, the American Trial Lawyers Association, the Illinois Bar Association, and the Association of the Bar of the City of New York. Examples of these resolutions are attached as Exhibit "A."

I appear before you to detail the reasons that lead to this policy's passage. I will also explain why it is appropriate for this Committee to amend S. 814, the Technical Corrections Act, to address the concerns that prompted the ABA to adopt this policy. The amendment we suggest as a remedy to the unique dilemma posed for both attorneys and their clients by §6050I would include an exemption from that section's reporting requirements for the attorney-client relationship.

BACKGROUND ON PRESENT LAW

Section 6050I of Title 26 of the United States Code was one of the tax reform measures included in the Deficit Reduction Act of 1984. The statute provides that any person who receives more than $10,000 in cash, including foreign currency, in the course of trade or business must file a return with the Internal Revenue Service stating:

(1) the name, address and tax identification number of the person from whom the cash was received;
(2) the amount of cash received;
(3) the date and nature of the transaction; and
(4) such other information as the Secretary of the Treasury may require.

The reporting requirement applies if the cash is received in one transaction or "two or more related transactions." The temporary regulations and Internal Revenue Service form issued to implement §6050I state that the report must be filed by the 15th day after the date of the transaction.

The statute imposes a second reporting obligation. Every person who filed a currency transaction return of the kind described above must annually furnish to each person whose name is set forth in the return a written statement showing; (1) the name and address of the person submitting the return; and (2) the aggregate amount of cash received by that person. This statement must be furnished to the payor on or before January 31st of the year following the calendar year in which the currency reporting return was filed.

The statute exempts three categories of cash transactions from the reporting requirements: (1) cash received in a transaction reported under Title 31, if the Secretary of the Treasury concludes that this would result in duplicate reporting; (2) cash received by financial institutions, as that term is defined in 31 U.S.C. §5312(a)(2); and (3) except to the extent provided for in regulations, transactions occurring entirely outside the United States.

PENALTY PROVISIONS

Civil penalty provisions of Title 26 are applicable to failing to file or furnish the currency transaction reporting return or the annual statement. Penalties under §6652(a)(1) apply to failure to file the §6050I return.

Section 6652(a)(1) provides that each failure to file a return is subject to a $50 penalty "unless it is shown that such failure is due to reasonable cause and not willful neglect." The total penalty imposed during any calendar year cannot exceed $50,000.

Penalties under §§6652(a)(3)(A) and 6678 (a) are applicable to both the Internal Revenue Service return that must be filed and the annual statement that must be provided to persons who are the subject of the return. Section 6652(a)(3)(A) provides that if the failure to file the return is "due to intentional disregard of the filing requirement," it is subject to a $100 penalty and the $50,000 annual limitation does not apply. Section 6678(a) provides that each failure to submit an annual statement to the payor is subject to a $50 penalty unless the failure is due to reasonable cause and not to willful neglect. Again, the total penalties assessed during any calendar year cannot exceed $50,000.

In addition to the civil penalty provisions, the IRS has announced that a willful failure to file the currency transaction reporting return or to disclose information required by the form may result in a misdemeanor criminal prosecution under 26 U.S.C. §7203. A copy of the IRS press release is attached as Exhibit "B."

LEGISLATIVE HISTORY

The tax reform bill introduced in the House of Representatives during the 98th Congress did not contain a currency transaction reporting requirement. It was first proposed in the "Omnibus Reconciliation Act of 1983" introduced as Senate Bill 2062.

An excerpt from the Senate Budget Committee report discussing the relevant portion of the bill is attached as Exhibit "C." It provides some language important to understanding the legislative intent in passing the reporting requirement.

The report expresses the Committee's concern that "approximately 80 percent of the revenue lost through noncompliance [with the tax laws] is attributable to the underreporting of income." It notes a 1981 IRS estimate that taxpayers filing returns failed to report $134 billion in income and that non-filers failed to report an additional $115 billion. This resulted in total lost tax revenues of $55 billion. Unreported income generated from illegal activities resulted in an additional $9 billion in lost tax revenue. The report then states the Committee's belief that "reporting on the spending of large amounts of cash will enable the Internal Revenue Service to identify taxpayers with large cash incomes."

These passages make it clear that the purpose of the currency reporting requirement, as envisioned by the Senate Budget Committee, was to raise tax revenues by identifying individuals who were not accurately reporting their incomes. It was not viewed primarily as a criminal law enforcement measure.

The report also makes it clear that the reporting requirement applies with respect to any receipt of cash in connection with a trade or business "whether or not the receipt constitutes income in the trade or business." Therefore, if a retainer fee in excess of $10,000 is deposited to an attorney's trust account, it would still have to be reported, even though the fee will be earned over a period of time, as services are rendered. Likewise, any cash sums that are the property of an estate or a client that are deposited with an attorney would also have to be reported.

The Conference Committee appointed to resolve differences between the House and Senate bills decided to include the currency transaction reporting requirement in the final Act. An excerpt from the Conference Committee report is attached as Exhibit "D." It is significant because it does not raise any addition points indicating that monies exchanged in the attorney-client relationship were intended to be embraced by the reporting requirement.

IRS FORM 8300

The Internal Revenue Service has issued Form 8300 for reporting currency transactions. A copy of the form is attached as Exhibit "E." The form is significant in several respects.

As noted previously, the statute requires recipients of cash to file a return identifying the person "from whom the cash was received." The "plain meaning" of this phrase indicates that if a third party physically delivered a cash fee on behalf of the client, the return would only have to identify the third party.

Form 8300 alters and greatly expands the "plain meaning" of this statutory phrase. Part I of the form requires that identifying information be provided about the individual or organization "for whom this transaction was completed." Part II of the form requires the same information for the "individual conducting the transaction...." The form states that Part II is to be completed "only if an agent conducts a transaction for the person in part I." Thus, the form clearly requires disclosure of the actual client's identity even if he does not personally tender the cash fee.

The form requires that the recipient of the cash disclose the following information about the payor and the transaction: (1) full name; (2) address; (3) employee identification number; (4) passport number and country of issuance; (5) alien registration number and country of issuance; (6) amount of cash received; (7) amount of cash received in the form of $100 bills; (8) nature of the transaction by general category (e.g., "business services provided"); (9) description of the property or service involved in the transaction; (10) method of payment (U.S. currency, coin or foreign currency); and (11) the date of payment. The recipient must also disclose his own name, address and social security or employee identification number. The form must be signed under penalty of perjury.

The "General Instructions" accompanying the form contain a statement which provides some insight into IRS' view of the purpose of the currency reporting requirement:

> "The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it, and whether you are required to provide it to us. The requested information is useful in criminal tax and regulatory investigations. In addition to directing the Federal Government's attention to unusual or questionable transactions, the reporting requirement discourages the use of currency in illegal transactions."

This statement reveals that the IRS views the currency reporting requirement as a tool for investigating and deterring criminal conduct, rather than a mechanism for raising tax revenues.

The instructions also state that the form is to be filed by the 15th day after the date of the transaction, either with the Internal Revenue

Service Data Center in Detroit, Michigan or by hand delivery to any local IRS office.

If the aggregate amount of cash received in two or more installment payments exceeds $10,000, the 15 day period is measured from the date of the payment that causes the aggregate amount to exceed $10,000.

Finally, in defining what constitutes a transaction in cash, the form provides that the reporting requirement applies only to the physical receipt of cash. It states, "A transaction in cash does not include a receipt of funds by means of bank check, bank draft, wire transfer, or other written order that does not include the physical transfer of cash."

TEMPORARY IMPLEMENTING REGULATIONS

On May 23, 1985, the Internal Revenue Service published temporary regulations in the Federal Register to implement §6050I. A copy is attached as Exhibit "F." It was made clear that "...these regulations reguire attorneys to report with respect to the receipt of cash in excess of $10,000...." Nevertheless, tacit recognition of the potential problems that reporting might pose for attorneys was evidenced by the statement, "[T]he [Internal Revenue] Service will entertain comments from the legal community concerning the possibility of developing an exception to the reporting requirement for information on transactions which might fall within the scope of the attorney-client privilege."

The announcement accompanying the regulations stated, "...[t]here is a need for immediate guidance. Therefore, these regulations have been published in question and answer format in order to facilitate their timely publication." In order to provide this guidance, a number of the "answers" included in the regulations contain examples of scenarios to illustrate the point being made. Several of these (e.g. Q-5, A-7, A-9(b)) specifically mention attorneys. Others mention situations often encountered by attorneys, such as those involving trusts, escrow arrangements, real estate transactions and debt collection.

The use of specific references to attorneys and matters that they frequently handle serves to illustrate the anticipated extent to which it can be expected that §6050I will impact on the attorney-client relationship. Nevertheless, as has been indicated previously in this statement, the legislative history gives no indication that Congress considered potential ramifications for that relationship. The remaining portion of this statement provides a cursory review of some of the problems it poses.

PROBLEMS POSED BY THE REPORTING REQUIREMENT

Government within our country, at all levels, has historically recognized that certain relationships should be zealously protected from unwarranted intrusion, public or private. Among these, the attorney-client relationship is universally recognized and honored.

The currency transaction reporting requirement poses a serious threat to the integrity of the attorney-client relationship, particularly in the criminal defense area. The requirement that defense attorneys inform the IRS when a client pays a cash fee in excess of $10,000 will have a destructive effect on the actual ability of clients to retain lawyers. It will also adversely affect the trust and confidence essential to a meaningful attorney-client relationship.

Furthermore, the attorney's submission of the form will generate evidence which could be used against the client in a prosecution for tax evasion, participation in a continuing criminal enterprise, and other federal criminal offenses. It is also likely that defense attorneys who submit the forms will find themselves designated as government witnesses and disqualified from further representation of their clients.

Undercover operations designed to trap lawyers into violations of the reporting requirements are also a very real possibility.

The attorney-client relationship is so central to the position of the citizen vis-a-vis the government in our country that it is guaranteed and protected by the Sixth Amendment. At the core of this relationship guaranteed by the Amendment is the attorney-client privilege. Citizens must have the freedom to obtain and pay for legal consultation privately, without fear that their lawyer will be required to report the formation of the relationship or any details concerning it to anyone, including the government.

The policy behind the attorney-client privilege is to promote "freedom of consultation of legal advisers by clients" absent any apprehension that disclosures concerning the consultation can be compelled. United States vs. Hodge and Zweig, 548 F.2d 1347, 1353 (9th Cir. 1977), citing 8 J.Wigmore, Evidence, §2291 at 545 (McNaughton Rev.Ed 1961). Accord In Re Grand Jury Investigation, 723 F.2d 447, 451 (6th Cir. 1983). As a practical matter, if a citizen knows that information could "more readily be obtained from the attorney following disclosure than from himself in the absence of disclosure," the citizen will naturally become reluctant to seek out legal advice and to confide in his lawyer. Fisher v. United States, 425 U.S. 391, 403 (1976). It is virtually assured that §6050I's application will insidiously undermine the basic trust and reliance which citizens must have when they seek legal counsel.

In many instances §6050I will also directly violate the attorney-client privilege. It is frequently stated that "absent unusual circumstances the identity of the client does not come within the attorney-client privilege," Gannett v. First National State Bank of New Jersey, 546 F.2d 1072, 1073 n.4 (3rd Cir. 1976), cert. denied, 431 U.S.

954 (1977); In Re Grand Jury Procedures (Pavlick), 680 F.2d 1026 (5th Cir. 1982)(en banc), and that the legal fee paid by the client is also not within the privilege. See In Re Michaelson, 511 F.2d 882, 888 (9th Cir.), cert. denied, 421 U.S. 978 (1975); In Re Grand Jury Proceedings, 517 F.2d 666, 670 (5th Cir. 1975). So many circumstances have been identified as exceptions, however, the exceptions have become as prevalent as the general rule.

Courts have decided the applicability of the privilege based upon a case by case analysis. Never has there been any willingness to permit wholesale disclosure requirements, some of which would clearly invade constitutionally protected rights and relationships.

The client's identity is protected by the privilege when the client himself would be privileged from such a disclosure. See Fisher, supra 425 U.S. at 404. For example, when a client would have a fifth amendment privilege to refuse to answer questions about cash payments made by him, his attorney could not be compelled to disclose facts about the payment.

Where a strong possibility exists that disclosure of information would implicate the client in the very matter for which legal advice was sought, the privilege applies. In Re Grand Jury Subpoenas Duces Tecum (Marger/Merenbach), 695 F.2d 363, 365 (9th Cir. 1982); In Re Walch, 623 F.2d 489, 495 (7th Cir.), cert. denied, 449 U.S. 994 (1980); In Re Grand Jury Investigation (Tinari), 631 F.2d 17, 19 (3rd Cir. 1980), cert. denied, 449 U.S. 1083 (1981). The client's identity is also privileged where the disclosure would be tantamount to disclosing an otherwise protected confidential communication, Baird v. Koerner, 279 F.2d 623, 632 (9th Cir. 1960), and where so much of the actual communication has already been disclosed that identification of the client amounts to disclosure of a confidential communication. NLRB v. Harvey, 349 F.2d 900, 905 (4th Cir. 1965); United States v. Tratner, 511 F.2d 248, 252

(7th Cir. 1975); Colton v. United States, 306 F.2d 633, 637 (2nd Cir. 1962), cert. denied, 371 U.S. 951 (1963). Another exception is recognized when disclosure of the identity of the client would provide the "last link" of evidence in an existing chain of incriminating evidence likely to lead to the client's indictment. In Re Grand Jury Proceedings (Pavlick), supra; In Re Grand Jury Proceedings (Twist), 689 F.2d 1351, 1352-2 (11th Cir. 1982).

From a broader perspective, every reported case construing the attorney-client privilege arose because the government was focusing, in some manner, attention on some individual who happened to be the attorney's client. The individual had been subpoenaed, or arrested, or indicted, or in some manner had come to the attention of the government.

For the first time in our history, §6050I marks a basic departure from every reported case. For now, a lawyer will be placed in the position of "waiving the flag" at the government and calling the government's attention to a client, in whom, the government may have had no interest. This would be triggered simply by the client's seeking to obtain legal assistance and paying in cash.

Lawyers in many states will have an ethical duty to resist the application of §6050I to their clients under their duty to "preserve the confidences and secrets of a client" Canon 4. This Canon has been widely construed as establishing a duty for lawyers to protect more than only the privileged disclosures of their clients, but extending to any matter which "could be embarrassing or would likely be detrimental to the client." Disciplinary Rule 4-101(a); Standard 28(c); Ethical Consideration 4-1 and 4-5. See State Bar of Georgia, Advisory Opinion Number 41 (September 24, 1984); District of Columbia Bar Association, Committee on Legal Ethics Opinion, Committee on Legal Ethics Opinion Number 124 (March 22, 1983); Philadelphia Bar Association, Professional

Guidance Committee Opinion Number 81-95 (undated); Birmingham Bar Association, Opinion of Professional Ethics (unnumbered) (January 9, 1981); Connecticut Bar Association, Committee on Professional EThics Informal Opinion Number 81-3 (October 9, 1980). Several of these ethical opinions also suggest that an attorney has a duty to utilize all appellate avenues before making any compelled disclosure.

The target of §6050I was obviously the disclosure of large consumer transactions, not transactions relating to privileged relationships which, in economic terms constitute but a drop in the bucket. Because the attention of Congress was focused on other types of transactions, apparently no thought was given to the impact of §6050I on attorney-client relationships.

We urge that, by amending S. 814, transactions which establish or maintain a privileged attorney-client relationship be exempted from the application of §6050I. Such an exemption would avoid a quagmire of litigation, including questions of constitutionality, and would detract little from the overall impact of this section's intended purpose -- revenue collection.

CONCLUSION

In summary, three points are important to reiterate:

1. It seems readily apparent that Congress, in passing §6050I, did not focus on its potential impact on the attorney-client relationship and did not intend to affect that relationship.
2. The purpose of the currency reporting requirement was to raise tax revenues not to create a new criminal law enforcement measure.
3. Section 6050I, however unintended, seriously erodes the confidentiality of attorney-client relationships. It threatens the ethical obligation of attorneys to protect their client's

secrets and confidences. In certain circumstances, it would violate the attorney-client privilege and would be unenforceable as an unconstitutional violation of the Fifth and Sixth Amendments. Furthermore, the revenue to be gained by eroding the attorney-client relationship is minimal.

Therefore, it is wholly appropriate for the Committee on Ways and Means to include a provision in S. 814 exempting the attorney-client relationship from the requirements of §6050I of the Internal Revenue Code. This is a practical application of the technical corrections process to clear up a problem that Congress never intended to create by enacting the law.

Thank you very much for the opportunity to bring this to your attention.

Attachments

1104c

EXHIBIT "A"

American Bar Association

SECRETARY
William H. Neukom
3900 First Interstate Cent
Seattle, WA 98104

WRITER'S DIRECT LINE 312/988-5155

March 18, 1985

Honorable Daniel Rostenkowski
Chairman, Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

RE: Deficit Reduction Act

Dear Mr. Chairman:

At the meeting of the House of Delegates of the American Bar Association held February 18-19, 1985, the attached resolution was adopted upon recommendation of the Illinois State Bar Association. The action taken thus becomes the official policy of the Association in this matter.

This resolution is transmitted for your information and whatever action you may deem appropriate. If hearings are scheduled on the subject of this resolution we would appreciate your advising Robert D. Evans, Director of the American Bar Association Governmental Affairs Group, 1800 M Street, N.W., Washington, D.C. 20036, (202/331-2214).

Please do not hesitate to let us know if you need any further information, have any questions or if we can be of any assistance.

Sincerely yours,

WHNeukom

William H. Neukom

WHN:dmb
Attachment
1619f/0268q/0269q

cc: Jon W. DeMoss, Esquire
President, Illinois State Bar Association
Robert D. Evans, Esquire

750 NORTH LAKE SHORE DRIVE, CHICAGO, ILLINOIS 60611
TELEPHONE (312) 988-5000

Resolution Adopted
by the
American Bar Association
House of Delegates

1985 Midyear Meeting
February 18-19, 1985

Report No. 8C

BE IT RESOLVED, That the American Bar Association expresses deepest concern over the effect upon the attorney-client privilege and upon the confidentiality of the attorney-client relationship of Section 6050I of the Internal Revenue Code, added by Section 146 of Title I of the Deficit Reduction Act of 1984, which requires disclosure of certain cash receipts in excess of $10,000;

BE IT FURTHER RESOLVED, That the American Bar Association urges the Department of the Treasury to delay issuance of regulations implementing Section 6050I with respect to receipt by lawyers of cash fees or expenses for legal services until an appropriate solution to this problem can be devised; and

BE IT FURTHER RESOLVED, That the Sections of Taxation and of Criminal Justice be authorized and directed to work with Treasury Department and Internal Revenue Service officials and with appropriate Committees of the Congress in an effort to exempt from disclosure requirements cash fees or expenses received by lawyers for legal services.

1577f/2

THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA
1050 31ST STREET, N.W., WASHINGTON, D.C. 20007-4499 (202) 965-3500

CRIMINAL LAW SECTION

Jack B. Zimmermann
Chairman
Five Post Oak Park
Suite 1130
Houston, TX 77027
(713) 552-0300

Francis J. Hartman
First Vice Chairman
100 High Street
Mount Holly, NJ 08060
(609) 267-5030

John F. Romano
Second Vice Chairman
1601 Belvedere Road
P.O. Box 3466
West Palm Beach, FL 33402
(305) 684-9000

Joseph Lawless, Jr.
Secretary
Fourteenth Floor
Three Penn Center Plaza
Philadelphia, PA 19102
(215) 496-0755

May 1, 1985

Barry Tarlow, Esquire
9119 Sunset Boulevard
Los Angeles, California 90069

Dear Barry,

Enclosed is a copy of the Resolution passed by the Board Of Governors of the Association of Trial Lawyers of America at its meeting in Austin, Texas on April 26, 1985.

Please advise me as soon as possible as to who I should contact, or advise the appropriate person to contact me, so that the Association of Trial Lawyers of America can work in conjunction with the American Bar Association and National Association of Criminal Defense Lawyers on this matter. Our civil lawyers were as concerned about this as were the criminal defense lawyers.

ATLA's 50,000 members should be a positive influence in this fight.

Sincerely,

Jack

Jack B. Zimmermann

JBZ/wb

Enclosure

cc: National Officers & Executive Committee
Officers, Criminal Law Section
Ms. Marianna Smith
Mr. Alan Parker
Mr. Michael Starr
Mr. Sidney Bernstein
Mr. Mark Kadish

BE IT RESOLVED, that the Criminal Law Section of the Association of Trial Lawyers of America expresses deepest concern over the effect upon the attorney-client privilege and upon the confidentiality of the attorney-client relationship of Section 60501 of the Internal Revenue Code, added by Section 146 of Title 1 of the Deficit Reduction Act of 1984, which requires disclosure of certain cash receipts in excess of $10,000;

BE IF FURTHER RESOLVED, that the Association of Trial Lawyers of America urges the Department of the Treasury to delay issuance of regulations implementing Section 60501 with respect to receipt by lawyers of cash fees or expenses for legal services until an appropriate solution to this problem can be devised; and

BE IT FURTHER RESOLVED, that the Board of Governors of the Association of Trial Lawyers of America appoint the Chairman of the Criminal Law Section to head a committee to work with Treasury Department and Internal Revenue Service Officials and with appropriate Committees of the Congress in an effort to exempt from disclosure requirements cash fees or expenses received by lawyers for legal services.

Jack B. Zimmermann

Sidney Bernstein,
Former Chairman
Criminal Law Section

Kluwer Law Book Publishers, Inc.
The Bar Building
36 West 44 Street
New York, NY 10036

Jack B. Zimmermann
Chairman
Criminal Law Section

Law Offices Of Jack B. Zimmermann
Five Post Oak Park
Suite 1130
Houston, Texas 77027

EXHIBIT "B"

News Release

Department of the Treasury
Internal Revenue Service
Public Affairs Division
Washington, DC 20224

Media Contact: Tel. (202) 566-4024
Copies: Tel. (202) 566-4054

For Release: 12/20/84

IR-84-132

Washington -- The Internal Revenue Service today announced the availability of Form 8300, Report of Cash Payments Over $10,000 Received in a Trade or Business.

The Tax Reform Act of 1984 provides that any person who in trade or business receives more than $10,000 in cash, including foreign currency, after 1984 in one transaction or related transactions must file a return of this information to the IRS.

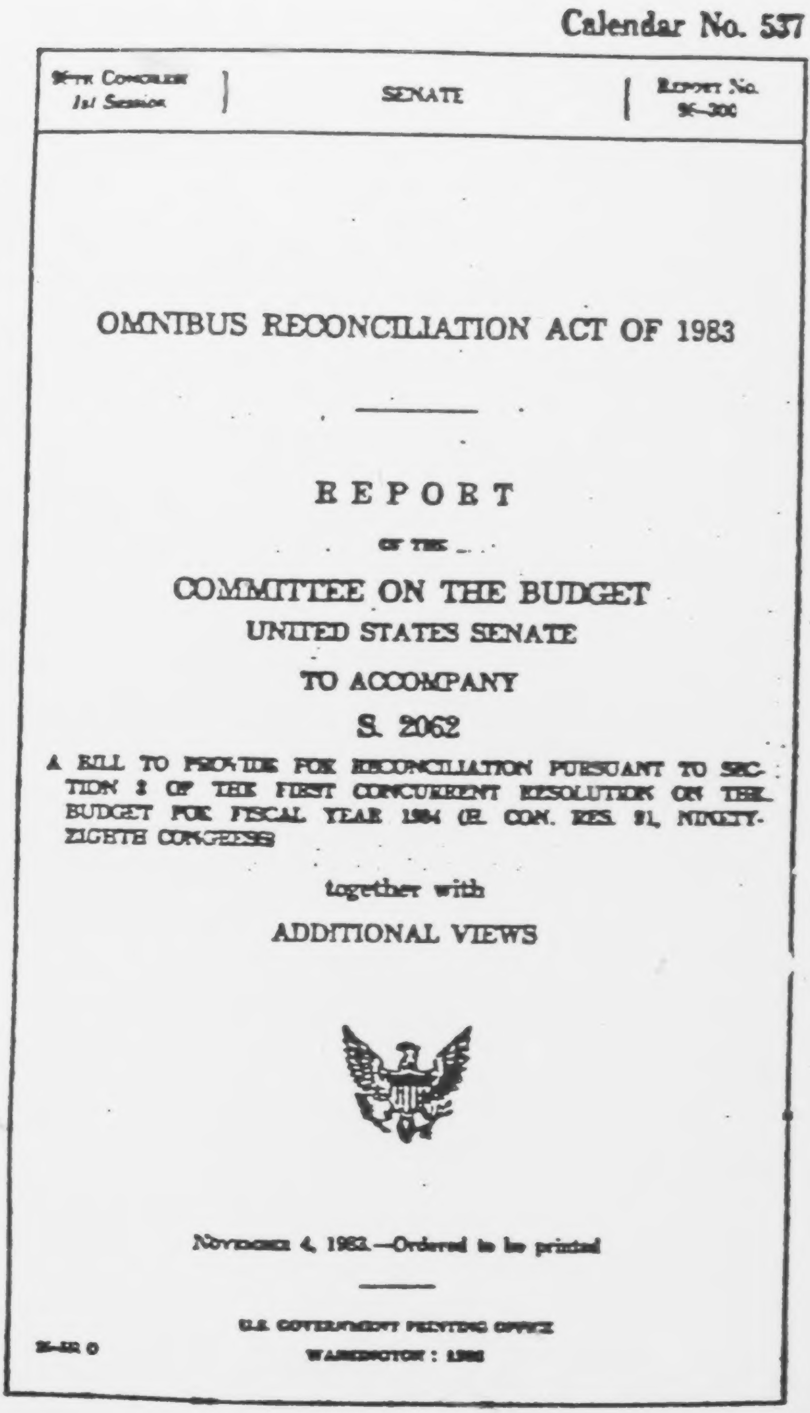
Banks and other financial institutions required under the Bank Secrecy Act to report cash transactions of more than $10,000 to the Treasury are not required to file Form 8300. Also, reporting is not required for transactions entirely outside the United States.

Form 8300 contains provisions for the payer's name, address and tax identification number, the amount received and the date and nature of the transaction. The law requires that a written statement must also be provided to the payer. A copy of Form 8300 may be used as the statement.

A person who fails to file required Forms 8300 with the IRS or to furnish the payer with the required statement is subject to a $50 penalty per failure, up to a $50,000 maximum penalty per calendar year. No penalty will be imposed if the failure is shown to be due to reasonable cause and not to willful neglect. If the failure to file Form 8300 is intentional, the civil penalty increases to $100 per failure, without the $50,000 annual limitation. Any taxpayer who willfully fails to file Form 8300 may be subject to a criminal fine of not more than $25,000 -- $100,000 in the case of a corporation -- and imprisonment for up to one year.

Forms can be obtained from the appropriate IRS Forms Distribution Center.

EXHIBIT "C"



Calendar No. 537

98TH CONGRESS
1st Session

SENATE

REPORT No.
98–300

OMNIBUS RECONCILIATION ACT OF 1983

REPORT

OF THE

COMMITTEE ON THE BUDGET
UNITED STATES SENATE

TO ACCOMPANY

S. 2062

A BILL TO PROVIDE FOR RECONCILIATION PURSUANT TO SECTION 2 OF THE FIRST CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1984 (H. CON. RES. 91, NINETY-EIGHTH CONGRESS)

together with

ADDITIONAL VIEWS

NOVEMBER 4, 1983.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1983

[illegible]

allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement, must maintain customer lists. These lists must show the name, address, and taxpayer identification number of each person investing in each plan or arrangement which the person organizes or sells. In addition, the Secretary is given authority to require such other information as he finds necessary. These lists must enable the Secretary to identify every purchaser of a given type of investment scheme. To this end, the Secretary may require the promoter to maintain these lists by reference to specific identifying characteristics relating to their purported tax treatment. These requirements do not apply with respect to partnership interests or subchapter S share ownership because such arrangements are already subject to special audit rules under the Code. Information must be retained for seven years after it is first required to be listed.

If the Secretary determines that the list requirement of this new provision is inconsistent with, or redundant vis-a-vis, any other provision of the Code, he may provide appropriate exceptions to the list requirement. Similarly, he may provide rules to eliminate maintenance of duplicate lists under this provision.

Any promoter or salesman who is required to maintain lists under the new provisions of the bill will be subject to a penalty comparable to that imposed on income tax return preparers who fail to maintain required lists. Thus, each failure to retain a record of any particular purchaser of an investment, will be subject to a $50 penalty except when the failure results from reasonable cause and not from willful neglect. Unlike the return preparer penalty, however, the penalty for failure to maintain required promoter lists is not subject to an aggregate annual limitation.

Effective Date

This list requirement applies to investments sold after December 31, 1983.

2. Reporting with Respect to Cash Transactions and Mortgage Interest (sec. 122 of the bill and new sec. 6050H of the Code)

Present Law

Cash transactions.—In addition to the information reporting required by the Code, the Bank Secrecy Act authorizes the Secretary to require reporting of certain financial transactions. Under these rules, certain banks and other financial institutions are required to report cash transactions (including deposits and withdrawals) of more than $10,000. The Treasury regulations provide a number of exceptions to this reporting requirement. Also, persons who bring or send more than $5,000 in cash or other bearer instruments into or out of the United States must report the event to the United States Customs Service. Finally, a United States taxpayer who files a tax return is required to notify the Internal Revenue Service, where provided for on the tax return, of the existence of a foreign bank account or other foreign financial account that he controls or in which he has an interest. If the amount in the account exceeds $1,000, then the amount must be reported on a separate form to the Treasury Department.

Bank Secrecy Act information is compiled by the Treasury Department, and made available to agents of the Internal Revenue Service.

Mortgage interest.—Under present law, interest paid on a mortgage is deductible in computing taxable income. There is, however, no requirement that the recipients of such interest provide information with respect to the payment to the Internal Revenue Service.

Reasons for Change

The committee is concerned that approximately 80 percent of the revenue lost through noncompliance is attributable to the underreporting of income. For 1981, the Internal Revenue Service estimates that taxpayers filing returns failed to report $134 billion of income and nonfilers failed to report $115 billion. This $250 billion of underreporting reduced tax receipts by an estimated $55 billion. Unreported income connected with illegal activities was estimated to result in an additional $9 billion of lost revenue. The committee believes that reporting on the spending of large amounts of cash will enable the Internal Revenue Service to identify taxpayers with large cash incomes.

In addition, the committee believes that a provision requiring recipients of mortgage interest payments in excess of $2,300 to report the interest received to the Internal Revenue Service (with a copy to the payor) will materially assist the Internal Revenue Service in verifying the accuracy of claimed mortgage interest deductions. Internal Revenue Service studies indicate that a significant percentage of all overstated deductions involves overstatement of interest deductions.

Explanation of Provision

Cash transactions.—Under the bill, any person who receives (for his own account or the account of another) cash in connection with a trade or business will be required to report on any transaction in which the amount of this cash received is $10,000 or more. A transaction subject to reporting is any receipt of cash including receipt in connection with the purchase of goods or services, the purchase or exchange of property, the opening of a deposit or credit account, the purchase of gambling chips, or any similar transaction. For this purpose, a series of related transactions will be treated as a single transaction.

This new reporting requirement is imposed with respect to any receipt of cash in connection with a trade or business whether or not the receipt constitutes income in the trade or business. Thus, reporting is required whether or not consideration is returned for the cash and whether or not the cash is received for the recipients' account or for the account of another. An exception is provided in the case of transactions subject to reporting under the Bank Secrecy Act.

The recipient of the cash will be required to report the name, address, and identifying number of the payor, the date and nature of the transaction and such other information as the Secretary may require. In addition to furnishing reports on each cash transaction to the Internal Revenue Service, the recipient of the cash must furnish each payor an annual statement aggregating the amounts of cash received from him. Such statement must be furnished on or before January 31 of the year following the year of the reportable event.

The bill defines cash for purposes of this provision as including only U.S. and foreign currency.

Mortgage interest.—Under the bill, any person who, in connection with a trade or business, receives $2,300 or more of mortgage interest payments from any person during the calendar year will be required to report the payor's, name, address, and taxpayer identification number and such other information as the Secretary may prescribe. This reporting requirement applies not only to the person entitled to the interest, but also to persons (such as service companies) who receive interest payments on behalf of another. For this purpose, mortgage interest is any interest on an obligation secured by an interest in real property (including, however, interest payable under a contract for deed) and amounts paid in lieu of interest for which a deduction is allowed. In addition to furnishing reports on mortgage interest receipts of $2300 or more for any calendar year to the Internal Revenue Service, the payment recipient must furnish to each payor an annual statement of the amount of mortgage interest received from that payor in the calendar year. Such statements are due on or before January 31 of the year following the calendar year for which the return is made.

The committee decided to require reporting only where the amount of interest exceeds $2,300 because payments in excess of that amount generally allow individual payors to claim itemized deductions.

Penalties.—The penalty for failure to make required reports will be similar to that imposed on failures to make other information reports. Thus, the penalty will be $50 per failure, subject to a maximum of $50,000 for any calendar year. The penalty is not applicable if the failure is due to reasonable cause and not to willful neglect. If, however, the failure to file is due to intentional disregard of the filing requirements, the penalty is not less than 10 percent of the aggregate amount not properly reported and the $50,000 limitation will not apply.

Effective Date

This new reporting requirement will apply to amounts received after December 31, 1982.

2. Tax Court Small Tax Case Provision (sec. 123 of the bill and sec. 7463 of the Code)

Present Law

Under present law, taxpayers using the "small tax case" procedure may appear pro se or be represented by any person admitted

EXHIBIT "D"

tary may, if he considers it appropriate, provide for an exception from reporting for interest paid on credit cards that are secured by real property. This exception would be appropriate if the Secretary determines that such interest is most likely to show on returns as interest on credit cards rather than home mortgage interest. The conferees do not intend that the Secretary except from reporting interest that is reported on Schedule A as home mortgage interest. The agreement also provides the Secretary with authority to issue regulations to eliminate duplicative reports.

The conferees anticipate that recipients of mortgage interest will require the payor to furnish his taxpayer identification number as part of the mortgage loan approval or closing process for mortgage loans entered into after December 31, 1984.

With respect to mortgage loans in existence on December 31, 1984, the conferees anticipate that the Secretary will require recipients of mortgage interest to request, at least once a year, from each payor the payor's taxpayer identification number, unless the recipient already has the payor's number in its accounting system. The conferees anticipate that the Secretary will permit these requests for a payor's taxpayer identification number to be included in the recipient's regular mailings of either payment coupon booklets or annual statements to the payor. Recipients will not be required to make separate mailings of these requests, unless the recipient does not otherwise contact the payor at least once each calendar year. The conferees anticipate that the first request will be made as soon as practicable, but in no event later than with the first mailing by the recipient to the payor in 1985. The conferees also anticipate that recipients will notify payors that the Internal Revenue Service requires the payor to furnish its taxpayer identification number in order to verify the payor's deduction for mortgage interest and that the payor is subject to a $50 penalty by the Internal Revenue Service if the payor fails to furnish its taxpayer identification number. If the interest recipient makes the annual requests described above, and properly and promptly processes the responses, it will not be subject to any penalty for failure to include a TIN on its information return to the Internal Revenue Service because the payor's failure to supply the requested number will constitute reasonable cause for failure to supply the number to the Internal Revenue Service.

The conferees intend that the Secretary coordinate the requirement that a statement be furnished to the payor under this provision with other requirements, such as those of Federal mortgage programs, that similar statements be furnished, so that duplicative reporting is minimized.

b. Returns relating to cash received in a trade or business

Present law

Under the Bank Secrecy Act, certain banks and other financial institutions are required to report cash transactions of more than $10,000.

House bill

No provision.

Senate amendment

A person engaged in a trade or business who receives, in the course of the trade or business, $10,000 or more in cash or foreign currency in one or more related transactions must report it to the Internal Revenue Service and provide a statement to the payor. Amounts required to be reported under the Bank Secrecy Act are excepted from this reporting requirement. Present law penalties for other failures to file information returns and statements apply (generally, $50 per failure except in cases of intentional disregard). The provision is effective for amounts received after December 31, 1984.

Conference agreement

The conference agreement generally follows the Senate amendment. Thus, reporting is required only for payments of more than $10,000 that are received by a person in the course of his trade or business. Reporting is not required on payments (a) that are received in a transaction reported under the Bank Secrecy Act if the Secretary determines that the report under this provision would duplicate the report under Bank Secrecy, or (b) that are received by certain specified financial institutions within the meaning of the Bank Secrecy Act.

With respect to these specified financial institutions, the conferees do not intend to affect the detailed reporting rules and exceptions which Treasury has developed. The other categories of financial institutions that are not specified as exempt from reporting under this provision have generally been exempted by Treasury from Bank Secrecy reporting. Examples of these other entities are certain dealers in precious metals, stones, or jewels, pawnbrokers, loan or finance companies, insurance companies, and travel agencies. These entities are required to report under this new provision. To the extent that Treasury also requires that they report transactions under Bank Secrecy, the Secretary can provide that duplicative reports that would be made on those transactions pursuant to this provision need not be made.

The conferees understand that the Treasury is considering extending certain Bank Secrecy Act reporting to casinos and other establishments. To avoid duplicative reporting requirements, the Secretary has discretion under the conference agreement and the Bank Secrecy Act to review the obligations imposed under the Bank Secrecy Act and to eliminate any reporting required under the conference agreement if the Bank Secrecy reporting, in substance, provides for the reporting of transactions required to be reported under the conference agreement with respect to the information that must be provided to the Treasury.

Under this provision, any taxpayer required to report under this provision who is in a trade or business and who, in the course of the trade or business, receives more than $10,000 in cash in one or more related transactions must report those transactions. For example, assume that an individual purchases a $8,000 item and a $1,500 item at an auction. The auction house adds a 10% buyer's premium and the local sales tax, at a 5% rate. The taxpayer pays his $10,972.50 bill in cash. The auction house must report on that transaction. The auction house could not avoid the reporting requirement by presenting two separate bills of $9,240 and $1,732.50.

c. Provisions relating to individual retirement accounts

Present law

The trustee of an IRA is required to report to the IRS and to the owner of the IRA on contributions or withdrawals made. Each failure to provide a report on a contribution or withdrawal is subject to a $10 penalty. Contributions must be made by the due date (including extensions) of the return for the year to which the contributions relate.

House bill.

The report must identify the years to which IRA contributions relate, effective for contributions made after April 15, 1984, relating to years beginning after December 31, 1983. The penalty is increased to $50 for each failure to provide a report on contributions or withdrawals, effective on the date of enactment.

Senate amendment

The report must identify the years to which IRA contributions relate effective for contributions made after 30 days after enactment for taxable years beginning after December 31, 1983. The penalty is increased to $50 for each failure to provide a report on contributions or withdrawals, effective on the date of enactment. Contributions must be made by the due date of the return (without extensions), effective for contributions made more than 30 days after the date of enactment, for taxable years beginning after December 31, 1983

Conference agreement

The conference agreement follows the Senate amendment, except that the provision is effective for contributions made after December 31, 1984. The conferees wish to clarify that the trustee may require that the owner of the IRA certify as to which year a contribution relates and that, except in unusual circumstances, the trustee may rely on that certification.

The date by which this report must be provided to the Internal Revenue Service and the periods to which the report relates are to be specified by the Secretary in regulations. The conferees intend that generally trustees will be required to report only once a year on the cumulative total of contributions relating to a particular taxable year. The Secretary may, however, provide for more frequent reporting if he determines that it is appropriate to do so. As to the date by which the report must be provided to the Internal Revenue Service, the Secretary could, for example, require reporting by the end of May on all IRA contributions relating to the taxable year with respect to which the individual's tax return was due on the preceding April 15.

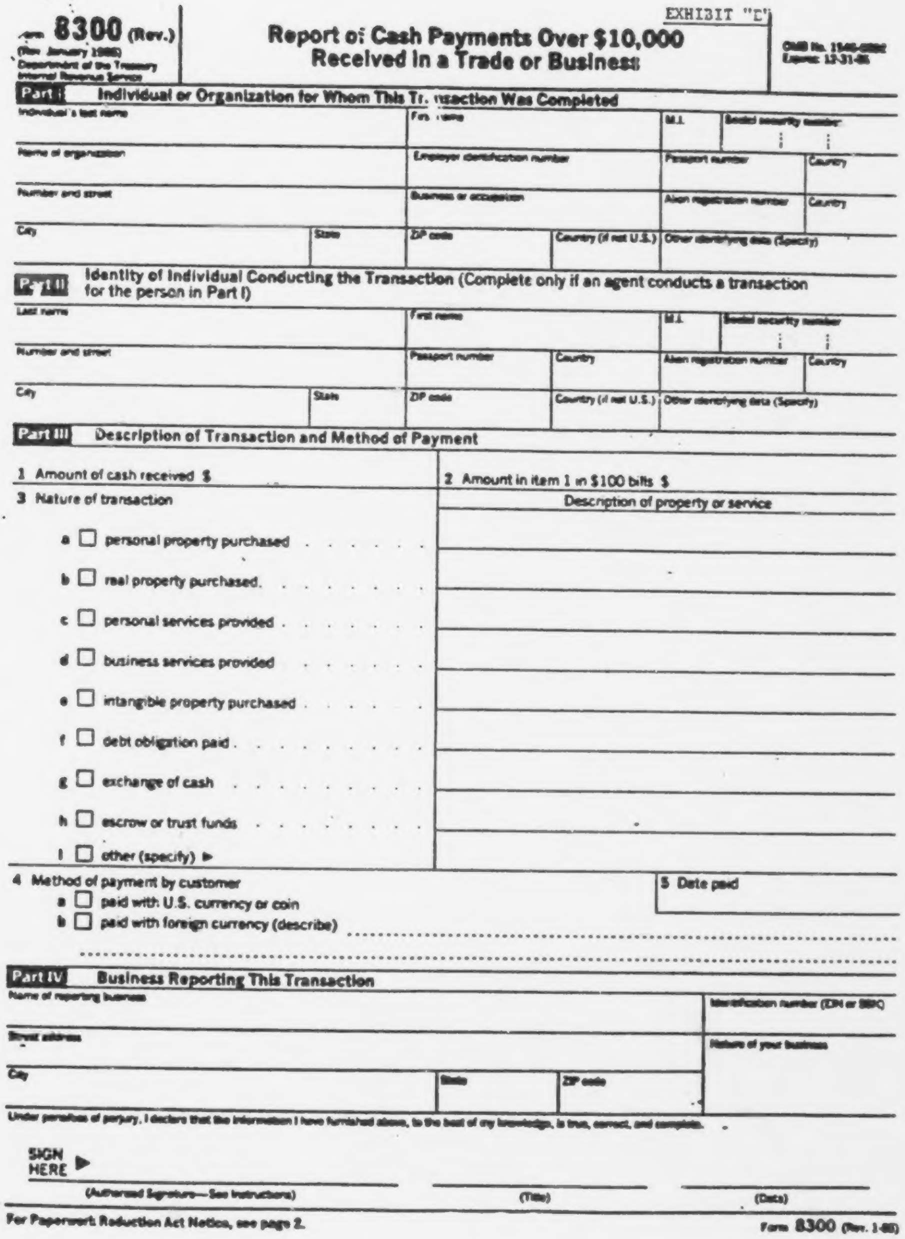


EXHIBIT "E"

Form **8300** (Rev.)
(Rev. January 1985)
Department of the Treasury
Internal Revenue Service

Report of Cash Payments Over $10,000 Received in a Trade or Business

OMB No. 1545-0892
Expires 12-31-86

Part I **Individual or Organization for Whom This Transaction Was Completed**

Individual's last name		First name		M.I.	Social security number
Name of organization		Employer identification number		Passport number	Country
Number and street		Business or occupation		Alien registration number	Country
City	State	ZIP code	Country (if not U.S.)	Other identifying data (Specify)	

Part II **Identity of Individual Conducting the Transaction** (Complete only if an agent conducts a transaction for the person in Part I)

Last name		First name		M.I.	Social security number
Number and street		Passport number	Country	Alien registration number	Country
City	State	ZIP code	Country (if not U.S.)	Other identifying data (Specify)	

Part III **Description of Transaction and Method of Payment**

1 Amount of cash received $

2 Amount in item 1 in $100 bills $

3 Nature of transaction	Description of property or service
a ☐ personal property purchased	
b ☐ real property purchased	
c ☐ personal services provided	
d ☐ business services provided	
e ☐ intangible property purchased	
f ☐ debt obligation paid	
g ☐ exchange of cash	
h ☐ escrow or trust funds	
i ☐ other (specify) ▶	

4 Method of payment by customer
a ☐ paid with U.S. currency or coin
b ☐ paid with foreign currency (describe) ....

5 Date paid

Part IV **Business Reporting This Transaction**

Name of reporting business			Identification number (EIN or SSN)
Street address			Nature of your business
City	State	ZIP code	

Under penalties of perjury, I declare that the information I have furnished above, to the best of my knowledge, is true, correct, and complete.

SIGN HERE ▶

(Authorized Signature—See Instructions) (Title) (Date)

For Paperwork Reduction Act Notice, see page 2.

Form 8300 (Rev. 1-85)

General Instructions

Paperwork Reduction Act Notice.—The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it, and whether you are required to provide it to us. The requested information is useful in criminal, tax, and regulatory investigations. In addition to directing the Federal Government's attention to unusual or questionable transactions, the reporting requirement discourages the use of currency in illegal transactions. Any person engaged in a trade or business is required to provide the information under Section 6050 I of the Internal Revenue Code.

Who Must File.—Each person engaged in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash in one transaction (or two or more related transactions) must file Form 8300. For example, multiple receipts of cash from any person which in any one day total more than $10,000 should be treated as a single receipt (and therefore reportable).

Certain precious metals dealers, precious stones dealers, jewelry dealers, pawnbrokers, loan or finance companies, insurance companies and travel agencies are not excepted and must file Form 8300 when they have reportable cash transactions. To the extent that the Assistant Secretary of the Treasury (Enforcement and Operations) requires these financial institutions to file Form 4789, Currency Transaction Report, Form 8300 is not required to be filed for the same transaction(s).

Exceptions.—Financial institutions who are required to file IRS Form 4789 under Section 5312(a)(2)(A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of Title 31, U.S.C., are excepted from filing Form 8300. These financial institutions include each agency, branch, or office in the United States of any person doing business in one or more of the capacities listed below:

(1) a bank (see Definitions);

(2) a broker or dealer in securities, registered or required to be registered with SEC under the Securities Exchange Act of 1934;

(3) a person who engages as a business in dealing in or exchanging currency (for example, a dealer in foreign exchange or a person engaged primarily in the cashing of checks);

(4) a person who engages as a business issuing, selling, or redeeming traveler's checks, money orders, or similar instruments, except one who does so as a selling agent exclusively, or as an incidental part of another business;

(5) a licensed transmitter of funds, or other person engaged in the business of transmitting funds abroad for others.

Transactions entirely occurring outside the United States are excepted from these reporting requirements, except to the extent regulations provide otherwise. The United States includes the 50 states and the District of Columbia.

When and Where to File.—File this form by the 15th day after the date of the transaction with the Internal Revenue Service Data Center, P.O. Box 32621, Detroit, MI 48232 ATTN: RCP or hand carry it to your local IRS office. Keep a copy of each Form 8300 for 5 years from the date you file it.

Identifying Number.—For individuals this is the social security number. For others it is the Federal employer identification number (EIN), which has 9 digits. For aliens or other non-U.S. individuals use the passport number or alien registration number and indicate the country.

Penalties.—Civil and criminal penalties are provided for failure to file a report or to supply information, and for filing a false or fraudulent report.

Statement to be provided.—A written statement must be provided to each person named in this form. The statement must be provided on or before January 31 of the year following the calendar year in which this report is made. The statement must show the name and address of the business receiving the cash and the total amount of cash received during the year from the payer and that the information is being furnished to the IRS. Keep a copy for your records. A copy of the Form 8300 that was filed with the Internal Revenue Service may be used as the statement if the payer had a single transaction for the year.

Specific Instructions

Part I

(1) For individuals, enter last name, first name, and middle initial, if any, in the name block in that order. For other than an individual, enter the complete organization name, address, and employer identification number in the boxes provided.

(2) In the social security block, enter the social security number of the individual conducting the transaction. If the individual has no number, write "None" in this block.

(3) If the individual is an alien or foreign national, enter the alien registration number or passport number and country or other official documents evidencing nationality or residence in the boxes provided.

(4) Complete the "Other identifying data" box for individuals other than aliens and foreign nationals. Other identifying information includes documents normally acceptable as a means of identification when cashing checks (e.g., a driver's license or credit card number may be entered in the "Other identifying data" box provided).

Part II

(1) In the address section, enter the permanent street address of the individual agent of the person in Part I conducting the transaction.

(2) In the social security block, enter the social security number of the individual conducting the transaction. If the individual has no number, write "None" in this block.

(3) If the individual is an alien or foreign national, enter the alien registration number or passport number and country or other official documents evidencing nationality or residence in the boxes provided.

(4) Complete the "Other identifying data" box for individuals other than aliens and foreign nationals. Other identifying information includes documents normally acceptable as a means of identification when cashing checks (e.g., a driver's license or credit card number may be entered in the "Other identifying data" box provided).

Part III

Enter in item 2 the amount of U.S. currency included in item 1 that is in $100 bills or higher. (For example, if the amount in item 1 is $30,000, and $25,000 of it was paid in $100 bills, enter $25,000 in item 2.)

Check the applicable boxes that describe the nature of the transaction. Briefly describe the kind of property or service for which the customer paid cash.

If the aggregate amount of cash received in 2 or more installment payments exceeds $10,000, the date entered in item 5 should be the date the payment is made that caused the aggregate amount of cash to exceed $10,000.

Part IV

Signature.—This report must be signed by an authorized individual. Also type or print the name of the authorized signer below the signature.

Definitions

Bank.—Each agent, agency, branch, or office in the United States of a foreign bank and each agency, branch, or office in the United States of any person doing business in one or more of the capacities listed below:

(1) a commercial bank or trust company organized under the laws of any state or of the United States;

(2) a private bank;

(3) a savings and loan association or a building and loan association organized under the laws of any state or of the United States;

(4) an insured institution as defined in section 401 of the National Housing Act;

(5) a savings bank, industrial bank, or other thrift institution;

(6) a credit union organized under the laws of any state or of the United States; and

(7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

Person.—An individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, and all entities treated as legal personalities, including organizations that are exempt from tax.

Cash.—The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. It includes United States silver certificates, United States notes, and Federal Reserve notes, but does not include bank checks, traveler's checks, or other negotiable or monetary instruments customarily accepted as money.

Transaction in Cash.—A transaction involving the physical receipt of cash from a person. A transaction in cash does not include a receipt of funds by means of bank check, bank draft, wire transfer, or other written order that does not include the physical transfer of cash.

Transaction.—The purchase of goods, services, personal or real property, and intangible property by a customer; a debt obligation paid for with cash; the receipt and conversion of cash to a negotiable instrument (for instance, a receipt of cash from a person in exchange for a check); and the receipt of cash to be held in escrow or trust.

☆ U.S. GOVERNMENT PRINTING OFFICE [illegible]

EXHIBIT "F"

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8025]

Income Tax; Taxable Years Beginning After December 31, 1953; OMB Control Numbers Under the Paperwork Reduction Act; Returns Relating to Cash in Excess of $10,000 Received in a Trade or Business

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the requirement of reporting cash in excess of $10,000 received in a trade or business. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect any person who, in the course of a trade or business in which such person is engaged, receives cash in excess of $10,000 in 1 transaction (or 2 or more related transactions). The regulations provide these persons with the guidance necessary to comply with the law. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: The regulations apply to cash payments received after December 31, 1984, and are effective May 23, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce H. Jurist of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the reporting of cash in excess of $10,000 received in a trade or business under section 6050I of the Internal Revenue Code of 1954, as added by section 146 of the Tax Reform Act of 1984 (98 Stat. 685). The regulations provide that any person engaged in a trade or business who receives, in the course of that trade or business, cash in excess of $10,000 in 1 transaction (or 2 or more related transactions) must file an information return with respect to that transaction. The regulations also provide that a person who makes an information return must furnish a statement to each person identified on the return. The temporary regulations will remain in effect until superseded by final regulations on this subject. The regulations are issued under the authority of sections 6050I and 7805 of the Internal Revenue Code of 1954 (98 Stat. 685 26 U.S.C. 6050I; 68 Stat. 917, 26 U.S.C. 7805).

Explanation of Provisions

Section 6050I provides that an information return must be made by any person engaged in a trade or business who receives, in the course of that trade or business, cash in excess of $10,000 in 1 transaction (or 2 or more related transactions). The return must be filed with the Service by the 15th day following the date of receipt of the reportable cash payment. Any person required to make an information return under section 6050I must also furnish a statement to any person identified on the return showing the aggregate amount of reportable cash received from that person. The statement must be furnished on or before January 31 of the year following the calendar year in which the cash is received.

Section 6050I(c)(1)(A) provides that the reporting requirements of section 6050I will not apply to cash received in a transaction reported under Title 31 of the United States Code if the Secretary determines that reporting under section 6050I would duplicate the reporting to the Treasury under Title 31. On February 8, 1985, final regulations effective on May 7, 1985, which classify casinos with gross annual gaming revenue in excess of $1,000,000 as financial institutions subject to reporting and recordkeeping requirements of the

Bank Secrecy Act provisions of Title 31, were published in the Federal Register (50 FR 5065). In light of the issuance of the Title 31 regulations, special rules are provided with respect to cash received by casinos with gross annual gaming revenue in excess of $1,000,000.

Although these temporary regulations require attorneys to report with respect to the receipt of cash in excess of $10,000, the Service will entertain comments from the legal community concerning the possibility of developing an exception to the reporting requirement for information on transactions which might fall within the scope of the attorney-client privilege.

Because of the January 1, 1985, effective date of section 6050I, there is a need for immediate guidance. Therefore, these regulations have been drafted in question and answer format in order to facilitate their timely publication. No inference should be drawn, however, regarding issues not raised herein or regarding the inclusion of certain questions, and not others, in these regulations.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commissioner of the Internal Revenue has determined that this regulation is not a major rule as defined in Executive Order 12291, or the Treasury and OMB implementation of the Order dated April 29, 1983. No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and a Regulatory Impact Analysis is not required for this rule. The collection of information requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act.

List of Subjects in 26 CFR 1.6001–1.6109–2

Income taxes, Administration and procedure, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. These regulations are issued under the authority contained in 26 U.S.C. 7805 and 26 U.S.C. 6050I. The authority citation for Part 1 is amended by adding, "§ 1.6050I–1T also issued under 26 U.S.C. 6050I."

Par. 2. The following new § 1.6050I–1T shall be added at the appropriate place.

§ 1.6050I–1T Returns relating to cash in excess of $10,000 received in a trade or business (Temporary).

The following questions and answers relate to the requirement of reporting cash in excess of $10,000 received in a trade or business under section 6050I of the Internal Revenue Code of 1954, as added by section 146 of the Tax Reform Act of 1984 (98 Stat. 685).

In General

Q–1: What does section 6050I require with respect to the reporting of cash received in a trade or business?

A–1: Section 6050I requires that an information return must be made by any person (as defined in section 7701 (a)(1)) who, in the course of a trade or business in which such person is engaged, receives cash in excess of $10,000 in 1 transanction (or 2 or more related transactions). For purposes of these questions and answers the person receiving the cash is referred to as the "recipient."

Q–2: What is the definition of "cash"?

A–2: "Cash" is the coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. Cash includes United States silver certificates, United States notes, and Federal Reserve notes, but does not include bank checks, traveler's checks, bank drafts, wire transfers or other negotiable or monetary instruments not customarily accepted as money.

Trade or Business Requirement

Q–3: Under what circumstances is a person considered to be engaged in a trade or business?

A–3: For purposes of this section, a person is engaged in a trade or business if such person is engaged in a trade or business within the meaning of section 162 of the Internal Revenue Code of 1954.

Q–4: Must cash in excess of $10,000 which is not received in the course of a person's trade or business be reported?

A–4: No. The receipt of cash in excess of $10,000 by a person, other than in the course of the person's trade or business, is not reportable. Thus, for example, an individual in the trade or business of selling real estate need not report the receipt of cash in excess of $10,000 arising from the sale of the individual's motorboat, if the motorboat was not used in any trade or business in which such individual was engaged. For purposes of this section, any cash received in a transaction by a corporation is considered to be received in connection with a trade or business in which the corporation engages.

Q–5: Must cash in excess of $10,000 which is received by a service provider (such as an attorney, accountant, financial advisor, architect, engineer, or doctor) from a client be reported?

A–5: Yes. The receipt of cash in excess of $10,000 by a service provider from a client as payment for services rendered, or as reimbursement for expenses incurred in connection with the performance of services, must be reported in accordance with this section. In addition, as discussed in A–6 of this section, the receipt of cash in excess of $10,000 by a service provider from a client for use on behalf of the client (such as in establishing a trust fund for the benefit of the client or the client's designee) must be reported.

Q–6: Must cash in excess of $10,000 received by a person for the account of another person be reported?

A–6: Yes. The requirements of this section apply regardless of whether cash is received for the recipient's own account or for the account of another person. For example, a person who collects delinquent accounts receivable for an automobile dealer must report with respect to the receipt of cash in excess of $10,000 from the collection of a particular account whether the cash is received for the collector's own account (*i.e.*, where the collector has purchased the delinquent account from the automobile dealer at a discount), or for the account of the automobile dealer (*i.e.*, where the rights to the proceeds from the account are retained by the automobile dealer and the collection is made on a fee-for-service basis).

Q–7: Must cash in excess of $10,000 received by an agent from its principal be reported?

A–7: A person engaged in a trade or business, who in connection with such trade or business acts as an agent (or in some other similar capacity) and receives cash in excess of $10,000 from a principal, must report with respect to the receipt of cash in accordance with this section unless the following exception applies. An agent who receives cash from a principal and uses the cash within 15 days in a cash transaction (the "second cash transaction") which is reportable under section 6050I or section 5312 of Title 31 of the United States Code and the regulations under section 5312 (31 CFR Part 103), and who discloses the name, address, and taxpayer identification number of the principal to the recipient in the second cash transaction need not report with respect to the initial receipt of cash from the principal. For example, if a person (the "principal") gives an attorney $75,000 in cash to purchase real property on behalf of the principal, and within 15 days the attorney purchases the property for cash from a real estate developer and discloses to the real estate developer the principal's name, address, and taxpayer identification number, the attorney need not report the initial receipt of $75,000 in cash. If, however, the attorney pays for the property by means other than cash, or effects the purchase more than 15 days following receipt of the cash from the principal, or fails to disclose the principal's name, address, and taxpayer identification number (assuming the agent does not know that the recipient has the principal's address or taxpayer identification number), or purchases the property from a person not engaged in a trade or business, then the attorney would be required to report with respect to the initial receipt of $75,000 in cash from the principal. An agent will be deemed to have met the disclosure requirements of this paragraph if the agent discloses only the name of its principal and the agent knows that the recipient has the principal's address and taxpayer identification number.

Transactions Subject to Reporting

Q–8: What is a "transaction" for purposes of this section?

A–8: For purposes of this section a transaction is the underlying event precipitating the payer's transfer of cash to the recipient. A transaction may be (but is not limited to) a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of cash for other cash; the establishment or maintenance of or contribution to a custodial, trust, or escrow arrangement; a payment of preexisting debt; a conversion of cash to a negotiable instrument; or the making or repayment of a loan.

Q–9: Can single transactions be divided into multiple transactions?

A–9: (a) No. A single transaction may not be divided into multiple transactions in order to avoid reporting under this section.

(b) The following examples illustrate the application of the principle of this A–9:

Example 1. A person has a tacit agreement with a gold dealer to purchase $36,000 in gold bullion. The reporting requirement of this section cannot be avoided by recasting the single sales transaction into 4 separate $9,000 sales transactions.

Example 2. An attorney agrees to represent a client in a criminal case with the attorney's fee to be determined on an hourly basis. In the first month in which the attorney represents the client, the bill for the attorney's services comes to $8,000, which the client pays in cash. In the second month in which the attorney represents the client, the bill for the attorney's services comes to $4,000, which the client again pays in cash. The aggregate amount of cash paid ($12,000) relates to a single transaction, the sale of legal services relating to the criminal case, and must be reported under the provisions of this section.

Example 3. A person has an intention of contributing a total of $45,000 to a trust fund, and the trustee of the fund knows or has reason to know of that intention. The reporting requirement of this section cannot be avoided by the person making five seperate $9,000 cash contributions to a single fund or by making five $9,000 cash contributions to five seperate funds administered by a common trustee.

Q–10: What are "related transactions"?

A–10: Any transactions conducted between a payer (or its agent) and a recipient in a 24-hour period are related transactions, and must be aggregated and reported as a single transaction (if the aggregate amount exceeds $10,000). Thus, for example, if an individual attends a one-day auction and purchases two items, at a cost of $9,240 and $1,732.50 respectively (tax and buyer's premium included), the auction house is required to report the aggregate amount of cash received from the related sales ($10,972.50), even though the auction house accounts separately on its books for each item sold and presents the purchaser with separate bills for each item purchased. In addition to the general rule stated in the first sentence of this A–10, transactions conducted between a payer (or its agent) and a recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions. For example, if a coin dealer makes a cash sale of $9,000 worth of gold coins to the same person on each of three successive days, the three $9,000 transactions are related transactions aggregating $27,000 if the dealer knows, or has reason to know, that each transaction is one of a series of connected transactions.

Q–11: Are separate departments of a business treated as a single recipient for purposes of aggregating the cash payments received by each?

A–11: For purposes of these questions and answers, each store, division, branch, department, headquarters, or office ("branch") (regardless of physical location) comprising a portion of a person's trade or business shall be deemed to be a separate recipient, unless the branch that receives a cash payment (or a central unit linking such branch with other branches) would in the ordinary course of business have reason to know the identify of payers making cash payments to other branches of such person. For example, assume that N, an individual, purchases regulated futures contracts worth $7,500 and $5,500, respectively, through two different branches of Commodities Broker X on the same day. N pays for each purchase with cash. Each branch of Commodities Broker X transmits the sales information regarding each of N's purchases to a central unit of Commodities Broker X (which settles the transactions against N's account). Commodities Broker X must report with respect to the two related regulated futures contracts sales in accordance with this section.

Q–12: How are multiple payments relating to the same transaction (or two or more related transactions) reported?

A–12: Cash deposits or installment payments (or other similar methods of payment of prepayment) relating to a single transaction (or two or more related transactions) are reported in three different ways depending on the size of the initial and subsequent payments. (a) If the initial payment exceeds $10,000 and any subsequent payment exceeds $10,000, the recipient must report each payment that exceeds $10,000. These payments must be reported separately (or if the payments are made less than 15 days apart, the recipient may (if it so elects) make a single report with respect to the aggregate amount of the initial and subsequent payment or payments). (b) If the initial payment exceeds $10,000 but no subsequent payment exceeds $10,000, the recipient must report with respect to the initial $10,000 payment (within 15 days after the payment is received, as required by A–19), but need not report with respect to any subsequent payment. (c) If the initial payment does not exceed $10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until such aggregate amount exceeds $10,000, and report with respect to the aggregate amount within 15 days after receipt of the payment that causes the aggregate amount to exceed $10,000. Any subsequent payment which by itself exceeds $10,000 must be separately reported.

Exceptions to the Reporting Requirement

Q–13: Must all recipients of cash in excess of $10,000 report under this section?

A–13: No. Financial institutions, as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312 (a) (2) of Title 31, United States Code, are not required to report the receipt of cash exceeding $10,000 under this section.

Q–14: What are the reporting requirements of this section with respect to financial institutions defined in subparagraphs (H), (I), (L), (M), (N), (O), (P), (Q), and (T) of section 5312(a)(2) of Title 31, United States Code?

A–14: The regulations under 31 CFR Part 103 do not require these financial institutions to report currency transactions under the Bank Secrecy Act. Accordingly, these financial institutions are required to report under this section with respect to transactions in which cash in excess of $10,000 is received.

Q–15: Are casinos which report certain cash transactions to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25 required to report the same transactions under section 6050I and the regulations under section 6050I?

A–15: Casinos having gross annual gaming revenue in excess of $1,000,000 will become subject to reporting and recordkeeping requirements under Title 31 of the Code of Federal Regulations, as amended by 50 FR 7065 (February 6, 1985), on May 7, 1985. Under the authority granted by section 6050I(c)(1)(A), if a casino receives cash in excess of $10,000 and is required to report the receipt of such cash directly to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25 and is subject to the recordkeeping requirements of 31 CFR 103.36, then the casino is not required to make a return with respect to the receipt of such cash under section 6050I and the regulations under section 6050I. This relief from reporting under section 6050I and the regulations under section 6050I applies only to cash received in the gaming business of a casino. See A–18 of these regulations.

Q–16: Are casinos which receive an exemption, under 31 CFR 103.45(c), from reporting certain cash transactions to the Treasury Department under 31 CFR 103.22(a)(2) and 103.25, required to report such transactions under section 6050I and the regulations under section 6050I?

A–16: The determination, under the authority granted by section 6050I(c)(1)(A), whether reporting will be required under section 6050I by casinos which are granted an exemption under 31 CFR 103.45(c) will be made on a case by case basis, concurrently with the granting of such an exemption.

Q–17: What are the reporting requirements of this section with respect to casinos having gross annual gaming revenue of $1,000,000 or less?

A–17: Since casinos having gross annual gaming revenue of $1,000,000 or less are not subject to the reporting and recordkeeping requirements of 31 CFR 103.22(a)(2), 103.25, and 103.36, such casinos are not eligible for the relief described in A–15 or A–16 and must report the receipt of cash in excess of $10,000 pursuant to the general requirements of section 6050I and the regulations under section 6050I.

Q–18: Are all transactions in which a casino with gross annual gaming revenue in excess of $1,000,000 receives cash in excess of $10,000 covered by A–15 or A–16?

A–18: No. Non-gaming businesses (such as shops, restaurants, entertainment, and hotels) at casino hotels and resorts are separate trades or businesses in which the receipt of cash in excess of $10,000 is reportable pursuant to the general requirements of section 6050I and the regulations under section 6050I. For example, if Casino A receives $12,000 in cash from a customer in payment for accommodations provided to that customer at Casino A's hotel, Casino A must report with respect to that transaction under section 6050I and the regulations under section 6050I.

Q–19: Is there a reporting requirement with respect to foreign cash transactions?

A–19: Generally, there is no reporting required with respect to a cash transaction if the entire transaction occurs outside the United States (the fifty states and the District of Columbia). An entire transaction consists of both the transaction as defined in A–8 of this section and the receipt of cash by the recipient. For example, assume that an airplane dealer reaches an agreement, which is formulated in part in the United States, to sell an airplane, with delivery of and payment for the airplane to be made in Mexico. If the dealer receives cash in excess of $10,000 in connection with the sale, the dealer must report in accordance with this section. If, however, no part of the agreement to sell had been formulated in the United States, the dealer would not be required to report with respect to the transaction. See A–20.

Q–20: Is there an exception to the rule that no reporting is required with respect to entire transactions occurring outside the United States?

A–20: Yes. If any part of an entire transaction occurs in the Commonwealth of Puerto Rico or a possession or territory of the United States and the recipient of cash in that transaction is subject to the general jurisdiction of the Internal Revenue Service under Title 26 of the United States Code and the recipient receives cash in excess of $10,000, then the recipient is required to report the transaction under this section.

Time, Manner, and Form of Reporting

Q–21: When must the reports required by this section be filed with the Internal Revenue Service?

A–21: In general, the reports required by this section must be filed with the Internal Revenue Service by the later of the 15th day after the date the reportable cash payment is received or the 15th day after the date of publication of these temporary regulations. If a person elects to report one payment several independently reportable payments, received within a 15-day period (as allowed in A–12), the report must be filed with the Internal Revenue Service by the 15th day after the initial payment is received.

Q–22: What form must a recipient use to report as required by section 6050I (a) and A–1 of these regulations?

A–22: A recipient must make an information return on Form 8300, which can be obtained from any Internal Revenue Service Forms Distribution Center.

Q–23: What information must be contained in a return described in A–22?

A–23: A return of information must contain the name, address, and taxpayer identification number of the person from whom the cash was received; the name, address, and taxpayer identification number of the person on whose behalf the transaction was conducted (if the recipient knows or has reason to know that the person from whom the cash was received conducted the transaction as an agent for another person); the amount of cash received; the date and nature of the transaction; and any other information required by Form 8300.

Q–24: Must a recipient follow any procedures to ensure that the information contained in a return is complete and correct?

A–24: Yes. Before effecting any transaction with respect to which a report is required under section 6050I (a) and A–1, a recipient must verify the identity of the person from whom the reportable cash is received. Verification of the identity of a person who purports to be an alien must be made by examination of such person's passport, alien identification card, or other official document evidencing nationality or residence. Verification of the identity of any other person may be by examination of a document normally acceptable as a means of identification when cashing or accepting checks (for example, a driver's license or a credit card). In addition, a return will be considered incomplete if a recipient knows (or has reason to know) that an agent is conducting the transaction for a principal, and the return does not identify both the principal and the agent.

Q-25: Where must the recipient file the return?

A-25: A recipient must file Form 8300 by mailing it to the address shown in the instructions to the form.

Q-26: Must a recipient keep a copy of each Form 8300 that it files?

A-26: Yes. A recipient must keep a copy of each Form 8300 that the recipient files for five years from the date of filing.

Requirement of Furnishing Statements to Customers

Q-27: What statements must be furnished to persons identified on a return filed by a recipient?

A-27: Any person required to make an information return under section 6050I must furnish a single, annual, written statement to each person whose name is set forth in a return ("identified person") filed with the Internal Revenue Service.

Q-28: What information must be included on the statement?

A-28: The statement must include the following information:

(a) The name and address of the person making the return;

(b) The aggregate amount of reportable cash received by the recipient during the calendar year in all cash transactions relating to the identified person; and

(c) A legend stating that the information contained in the statement is being reported to the Internal Revenue Service.

Q-29: Must the statement be in a particular form or format?

A-29: No.

Q-30: Is the statement considered to be furnished to an identified person if it is mailed to the identified person at the identified person's last known address?

A-30: Yes.

Q-31: When is a statement required to be furnished to an identified person?

A-31: A statement is required to be furnished to an identified person on or before January 31 of the year following the calendar year in which the cash is received.

Penalties

Q-32: Are there penalties for failing to comply with the requirements of section 6050I and the regulations thereunder?

A-32: Yes. The penalty for failing to make any information return under section 6050I with respect to any identified person is provided in section 6652. The penalty for failing to furnish a statement to any identified person is provided in section 6678. Criminal sanctions also apply to willful failures to make a return under section 6050I.

Effective dates

Q-33: When is section 6050I effective?

A-33: Section 6050I is effective with respect to cash payments received after December 31, 1984.

American Bar Association

April 14, 1986

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: White Collar Crime Oversight
Hearing - Money Laundering

Dear Mr. Chairman:

We appreciate the opportunity to respond to the question posed by Senator Arlen Specter arising from the testimony on behalf of the American Bar Association on money laundering. Senator Specter posed the following question:

> You have stated that the major problem with money laundering is its detection, and not the prosecution of the offenses, once discovered. Is it the position of the ABA then that bills which create new offenses need not be enacted, and that the efforts should rather be directed toward extra personnel in the organizations which now enforce the existing statutes and regulations? If so, which administrative changes do you believe to be necessary in order to deal with the problem?

The American Bar Association recommends the enactment of a narrowly defined money laundering statute that prohibits intentionally and knowingly engaging in financial transactions designed to conceal criminally derived property. The Association opposes the enactment of the broadly defined crime of money laundering as contained in Senate Bills, S. 1335 and S. 572, and House Bills, H.R. 2785, H.R. 2786, H.R. 1367 and H.R. 1945. The Association feels that a narrowly drafted money laundering statute may be useful to law enforcement authorities in those very rare situations where money laundering has been discovered but cannot be prosecuted under existing law. The Association does not believe a need has been demonstrated for the enactment of the far reaching statutes contained in the bills mentioned above. The Association is particularly concerned about those bills which would replace the traditional criminal intent standards of "knowingly and intentionally" with such standards as "reckless disregard" and "reason to know." Under these lesser standards, there is a substantial risk that innocent parties may be subject to prosecution and conviction.

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It is the position of the American Bar Association that more effort needs to be devoted to improving enforcement of existing statutes and regulations. There is clearly a need for more personnel to be assigned to money laundering investigations and we believe this would be the single most effective step that could be taken to combat money laundering. Money laundering investigations require considerable man hours because transactions must be traced through numerous accounting records, frequently in different financial institutions and other entities. No matter what statute is enacted, this investigative work will be required.

Other legislative steps that could be taken to administratively improve money laundering enforcement include the following:

1. Amending the Bank Secrecy Act to provide for faster notification of possible money laundering transactions to law enforcement agencies.

2. Amending the Bank Secrecy Act to require additional reporting of foreign transactions including transactions not involving currency or monetary instruments but which are commonly used to conceal money laundering transactions. Wire transfers are a frequently used money laundering device.

In reviewing federal law enforcement activities with respect to money laundering we noted that it takes an inordinate amount of time for reports on possible money laundering transactions to reach field law enforcement personnel which substantially diminishes the effectiveness of the reporting requirements of the Bank Secrecy Act. We feel this is a situation that can be easily remedied and urge the Committee to give this matter its attention.

One of the most difficult problems in money laundering enforcement is the use of foreign financial institutions. We believe that a vigorous diplomatic effort should be mounted to enter into treaties with other nations to provide for access to foreign evidence on money laundering transactions. While some progress has been made in this area, particularly with respect to Switzerland and the Cayman Islands, much more needs to be done.

We appreciate the opportunity to respond to the questions raised by Senator Specter. If we can be of any further assistance to either the Committee, the Members of the Committee or the Committee staff, please do not hesitate to contact us.

Sincerely,

Bernard Bailor

Bernard Bailor
Chairman
Subcommittee on Money Laundering
White Collar Crime Committee

Samuel J. Buffone

Samuel J. Buffone
Member
White Collar Crime Committee

BB:SJB:dc

cc: Honorable Arlen Specter

Senator **Grassley**. I have just one question and then I have been informed by staff that Chairman Thurmond and other Senators will have some questions to submit in writing. But I would like to have you, Mr. Buffone, comment on Mr. Hodges' suggestion of creating the incentive to disclose information by not imposing a civil penalty on financial institutions that promptly disclose possible violations to authorities.

Mr. **Buffone**. I have not read Mr. Hodges' testimony. I am not sure I understand your question, Senator Grassley. Is it that there would be a civil penalty placed on——

Senator **Grassley**. Not imposing a civil penalty. Maybe I ought to invite——

Mr. **Hodges**. Yes, I think I can clarify that point. There is some precedent for this in consumer laws, for example, regulation C and regulation B, where the law provides that if the bank discovers the error, and reports the error to the proper authorities, before it is brought to their attention by some consumer, or in this case the Government, and where it was merely an oversight, for example, then the bank would not be held liable for civil penalties.

Senator **Grassley**. And that is what I desire that you would comment on, if you can. If you cannot, then I would ask you to comment in writing.

Mr. **Buffone**. I will give you a brief comment, Senator Grassley. It might be appropriate for the ABA to submit additional written comments since I am not authorized to speak on behalf of the association on items not included in our report. I believe that kind of a recommendation would go a long way toward streamlining the system and removing some of the burdens from the administrative process.

One of our principal recommendations is that a *mens rea* requirement be placed in any Federal money laundering legislation. We believe that the mental element of intentionally engaging in money laundering activities is critical, therefore the kind of make-good transaction that would indicate that there had been an oversight, and that there is corrective action being taken, I believe would be consistent with that approach.

Senator **Grassley**. Thank you very much for your kind attention. I will have to recess the meeting because of the vote now. It is my understanding that Chairman Thurmond will be back just as soon as the vote is over.

[Short recess.]

Mr. **Shedd**. The committee will come to order.

Senator Thurmond and Senator Biden are tied up, as are a number of other committee members, with the Fitzwater nomination. I have just spoken to them and they said because the nomination will continue for a little while, they are going to ask that the witnesses put their statements in the record and be available to be recalled next Tuesday afternoon. Mr. Trott and Mr. Weld, the same for you, expect to be called next Tuesday afternoon, and the E.F. Hutton hearing for next Tuesday will be postponed.

[The prepared statements of Mr. Trott and Mr. Weld follow:]

STATEMENT

OF

STEPHEN S. TROTT
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

Mr. Chairman and Members of the Committee, once again I am pleased to be here today to re-affirm the views of the Department of Justice on one of the biggest problems for law enforcement, the laundering of money derived from criminal activity. I originally testified on the subject before this Committee on October 29, 1985. On that occasion, I went into the details of the Administration's proposal to prohibit money laundering, which became S. 1335 and which was introduced in the House as two identical bills, H.R. 2785 and H.R. 2786.

I would respectfully request from the Committee that my testimony of October 29, 1985, be incorporated in the record today. It makes clear the particular reasons why the Department of Justice feels there is a definite need for approval of the money laundering bill and explains the nature of and reason for inclusion of its specific provisions.

As you will recall, I stressed in that testimony, that in spite of the successes that United States law enforcement agencies have achieved in the war against drug trafficking and its close partner in crime, money laundering, through the use of the Bank Secrecy Act, its inherent limitations and the limitations imposed by some provisions of the Right to Financial Privacy Act, were such that we are falling short in providing law enforcement with the right weapons to use against money laundering. I also pointed out that a then recent appellate court decision had dealt a severe blow to our efforts in using the reporting requirements of the Bank Secrecy Act to identify money launderers. The United States v. Anzalone decision by the United States Court of Appeals for the First Circuit issued July 1, 1985, (766 F.2d 676) reversed a conviction based on the government's theory of the illegality of "structuring" separate currency transactions of less than $10,000 to defeat the filing requirements of the Bank Secrecy Act. "Structuring" as used by the government in criminal prosecutions under Title 31 of the United States Code, consists of breaking up currency transactions of more than $10,000 into separate smaller transactions in order not to trigger the CTR filing requirements.

Since that first adverse decision and since the last time I appeared before this Committee to testify on this subject, two other Courts of Appeals and one District Court have partially or entirely followed in the First Circuit's footsteps and reversed convictions for "structuring." 1/ All of our efforts at curbing what we believe to be illegal activity otherwise known as "smurfing" have either been wounded, or killed, by these decisions.

The Administration is trying to diminish the devastating effects of these adverse court decisions by effectuating changes to the applicable regulations to bring them within the framework of what would be allowed under the court decisions. However, even if certain regulatory changes went into effect tomorrow, the fact remains that the Bank Secrecy Act and its regulations, with all the possible feasible amendments, would fall short of giving law enforcement the effective tools it needs to combat money laundering. There is only so much we can do by regulation to prevent structuring without imposing undue burdens on the overwhelming majority of innocent people. You should not be misled by the success stories you are about to hear, dealing with effective prosecutions under the Bank Secrecy Act, into believing that the Act is a totally effective tool against money laundering. There are many forms of money laundering which are not covered and possibly could never be covered by the Bank Secrecy Act even if further amended. Criminals are very imaginative in circumventing even the best drawn regulations.

However, S. 1335, which the Justice Department fully supports, is an effective tool. It would give federal law enforcement a lethal weapon in its war against organized crime. The money laundering bill would directly prohibit money laundering so that the only limitations on our ability to prosecute would be those arising from the nature of the available evidence. The Act would hit criminals where it hurts them the most - in their pockets.

The passage of this Act would be a giant step in our battle against organized crime and drug trafficking. I hope you will give it immediate attention.

FOOTNOTE

1/ United States v. Varbel, et al; 9th Cir, Jan 10, 1986, 780 F.2d 758.

The Reporting Act (Bank Secrecy Act Title 31 U.S.C. 5312 et. seq.) and its regulations did not impose a duty on appellants to inform the bank involved (in the handling of what the government claimed were structured transactions) of the nature of their currency transaction. The reporting obligation is clearly on the bank and the bank not knowing of the nature of the transaction did not have any obligation to report it. No crime was committed thus appellants could not aid and abet or cause anyone to commit an offense against the United States.

United States v. Ronderos; 9th Cir., February 10, 1986, 781 F.2d 1432

"Based on our recent decision in U.S. v. Varbel, (supra) where each currency transaction involves less then $10,000, there can be no conspiracy under 18 U.S.C. 371 to violate Section 5313, since the individual transaction involved were perfectly legal."

United States v. Denemark; 11th Cir., Jan 16, 1986, 779 F.2d 1559

Defendant could not be convicted under 18 U.S.C. §1001 for causing financial institutions to fail to file currency transaction reports where there were no currency transactions in excess of $10,000 which would require financial institutions to file reports, even though relevant statutes were subsequently amended in a manner which could be construed as making his conduct of purchasing 14 cashiers checks in amounts of $9,900 from 14 different banks criminal. The decision leaves open the possibility that conducting those transactions at the same bank, at least the same day, would be unlawful in that Circuit, unlike the First or the Ninth.

U.S. v. Robert C. Cogswell and David P. Schwindt; N.D. of Cal; Cr. 85-646, decided November 19, 1985, ________ F. Supp. ________.

"Because this court finds that the Reporting Act (Bank Secrecy Act, Title 31 U.S.C. §5312, et. seq.) does not impose a duty to report transactions in amounts under $10,000 it also finds that the defendants cannot be prosecuted for concealing material facts, because the defendants had no legal duty to disclose any facts."

(Parentheses ours)

STATEMENT

OF

WILLIAM F. WELD
UNITED STATES ATTORNEY
DISTRICT OF MASSACHUSETTS

Mr. Chairman, I very much appreciate the opportunity to appear before the Committee today, and to share with you some brief observations concerning the problem of money laundering.

Cash as a problem for criminals

Several of the federal crimes most frequently prosecuted involve large amounts of cash. In narcotics cases, cash is thrust on the traffickers because drugs are paid for on the street in cash. Similarly in organized crime cases, the predicate offenses (gambling, prostitution, loansharking and protection) are cash businesses. In public corruption and tax evasion cases, cash is generated purposely by the perpetrators in order to avoid leaving a "paper trail" which investigators can follow.

In all these types of cases, the criminal needs to dispose of cash by investing it or converting it to a more safely portable form. This need creates opportunities for government prosecutors and investigators--opportunities which can be enhanced by new legislation in the money laundering area.

Disclosure requirements vs. substantive prohibition

There are two ways the law can seek to exploit the vulnerability created by the criminal's need to dispose of cash. The first is through "disclosure" statutes, requiring that reports be filed with the government when large amounts of cash are transferred or exchanged. The second is to prohibit directly the concealment of illicit cash and its conversion into other forms of wealth--forms which are safer for criminals to carry around and which do not raise suspicion. Both these types of laws are useful, but only the first is now on the books.

Current reporting requirements

As the members of the Committee are aware, Title 31 of the U. S. Code and related regulations impose three reporting requirements: first, that financial institutions report to the Internal Revenue Service (IRS) any transfer of currency in excess of $10,000; second, that individual couriers report to the U. S. Customs Service the transport of more than $10,000 in cash across U. S. borders; and third, that individuals report to the IRS any foreign bank accounts having a balance of more than $5,000.

The Tax Reform Act of 1984, and implementing regulations, also now requires that any person engaged in a trade or business who receives cash in excess of $10,000 in one transaction in the course of that trade or business, or in two or more related transactions, must file a form reporting this to the IRS within 15 days. Thus, the requirement which previously applied only to financial institutions has been extended to anyone engaged in a trade or business.

The law thus imposes on persons dealing unlawfully in large quantities of cash, e.g., narcotics traffickers, corrupt public officials, tax evaders, bookmakers, and loansharks, a Hobson's choice: either keep the large quantities of cash outside the legitimate banking system, where cash is more noticeable and subject to a greater likelihood of theft, or else have the large cash transactions reported, and thus subject to scrutiny by law enforcement agencies.

Recent "reporting" cases in Massachusetts

Two recent criminal cases in Massachusetts illustrate the efforts of individuals to use banking facilities to generate or receive large amounts of cash.

In the first case, the Bank of New England on February 19, 1986, was convicted by a federal jury on 31 felony counts of wilfully failing to report cash transactions over $10,000 for a particular customer. The bank customer was acquitted of aiding and abetting the bank's violations, and two head tellers at the bank were acquitted of wilfully failing to file certain of the required forms.

The government's evidence at trial was that on 31 occasions between June, 1983 and July, 1984, the customer visited the Prudential Branch of the Bank of New England and withdrew in excess of $10,000 in cash from one of his checking accounts. On each occasion, the customer used more than one "counter check" to obtain the cash. While no single check exceeded $10,000, the total of the checks and thus the cash transferred by the bank to the customer on each occasion exceeded $10,000. The combined withdrawals totalled approximately $700,000.

There was testimony at the trial from bank employees that they had speculated the customer was a bookmaker, and that they believed he would be angry if they filed currency reports. There was also evidence that it was the practice of the customer at Christmas time each year to provide tellers with gifts of $100 in cash, and bottles of wine.

In another recent case, The Provident Institution for Savings was convicted on February 28, 1986, of knowingly and wilfully failing to report to the IRS forty-nine currency transactions in excess of $10,000, totalling approximately $956,000, between January, 1981 and August, 1984. The bank pleaded guilty to a one-count felony charge covering all the transactions. A branch manager pleaded guilty to related misdemeanor charges.

The forty-nine transactions involved were handled at two branches of The Provident Institution for Savings: Hanover Street, in Boston's North End, and Kneeland Street, in Boston's "Chinatown" section. The Hanover Street branch conducted eighteen transactions amounting to $394,000. The Kneeland Street branch conducted thirty-one transactions amounting to $562,000.

Sixteen of the eighteen transactions at the Hanover Street branch were conducted by or on behalf of the Angiulo brothers and their family, either by cash deposit or cash purchase of cashier's checks. Three of the Angiulo brothers were convicted on February 26, 1986, of conducting the affairs of the Boston faction of La Cosa Nostra as an organized criminal racketeering enterprise.

Impact of enforcing the cash reporting laws

Criminal prosecutions of banks are a vivid way to impress on bankers their legal obligation to report large cash transactions. The rate of compliance with this reporting law nationwide has increased dramatically since the publicity attendant on a case involving the Bank of Boston, in February, 1985. Many banks have adopted new internal procedures to promote reporting of large cash transfers; the training manuals and programs developed by the Bank of Boston, for example, have been purchased by sixty other banks.

This is all to the good, as far as law enforcement is concerned. The more often those forms are filed, the more often they will be available for us to use as evidence of narcotics trafficking, organized crime, public corruption, or tax evasion.

Need for substantive prohibition

But reporting requirements, no matter how high the degree of compliance, are not a sufficient response to the problem of money laundering. We can expect that through the use of shell corporations, multiple accounts, straws, front men, and low-level couriers or "smurfs," criminals such as narcotics traffickers and their associates will seek to undercut the value of the cash reporting forms--to throw dust in the eyes of investigators, as it were. If we are really serious abut exploiting the criminals' desire to launder their cash, then such secretive and evasive activity should itself be a crime.

New legislation ~~to~~ prohibit money laundering is the logical next step beyond simple disclosure requirements. Such legislation would mean that money launderers could not create a "safe harbor" for themselves by, for example, causing useless or misleading cash reporting forms to be filed.

Such legislation would reach not only the banker or businessman who wilfully closes his eyes to the true nature of what he is being asked to do; it would also reach, ideally, individuals who are trying to launder the proceeds of their own criminal activity. Under current law, such individuals have no direct duty to file cash transaction reports, and cannot be convicted of aiding and abetting a bank's violation unless the government can prove the individual was aware of the bank's legal duty. A general prohibition against money laundering would close that loophole.

In assessing various forms of proposed money laundering legislation, it is worth keeping in mind that criminals do not take their illicit cash only to banks and other financial institutions. They invest it in money market mutual funds, in stocks and bonds, in commercial paper, in precious metals and jewelry, and in real estate. They attempt to run it through casinos, race tracks, bars, restaurants, and cash-oriented businesses of all kinds. They hide it in safe deposit boxes; they bury it. So any legislative response which is aimed at banks and bankers alone is destined to be only a partial response.

* * *

Thank you again, Mr. Chairman, for the opportunity to appear before the Committee today.

Mr. **Shedd**. Thank you very much.

[Whereupon, at 4:21 p.m., the committee was recessed, to reconvene on Tuesday, March 25, 1986.]

WHITE COLLAR CRIME—Part 2

(Money Laundering)

TUESDAY, MARCH 25, 1986

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:03 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Grassley, Biden, Specter, McConnell, and Metzenbaum.

Staff present: Michael Regan, counsel; Lisa DeFusco, staff member; Scott Green, minority counsel; and Kolan Davis, counsel.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

The committee continues the hearing on money laundering which was commenced on March 18. The committee has invited, from the Department of Justice, Assistant Attorney General Stephen Trott and U.S. attorney for the District of Massachusetts William Weld, from the Department of Justice, to testify about money laundering. Additionally, the committee welcomes Mr. Richard Dionne, president and chief operating officer of the Provident Institution for Savings, from Boston, MA.

They will provide important testimony on recent Justice Department investigations into money laundering schemes which will aid the efforts of this committee to understand the scope and complexity of the money laundering problem. With this information, this committee can better understand what reforms of current law and banking practices are needed.

We look forward to hearing and reviewing your testimony on this occasion.

At this point, I want to place in the record, without objection, an opening statement by Senator Grassley.

[The prepared statement of Senator Grassley follows:]

OPENING STATEMENT OF SENATOR CHUCK GRASSLEY

I want to thank you Mr. Chairman, again, for conducting this series of White Collar Crime hearings, and I would also like to thank today's distinguished witnesses for their participation.

I do have a few questions that are really follow-ups to my questions last week. That I would like to submit in writing to Mr. Trott.

The CHAIRMAN. Our first witness is the Honorable Stephen Trott, Assistant Attorney General for the Criminal Division, and Mr. William Weld will be with him, the U.S. attorney for the District of Massachusetts.

Mr. Trott, you may proceed.

TESTIMONY OF STEPHEN S. TROTT, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE; AND WILLIAM F. WELD, U.S. ATTORNEY FOR THE DISTRICT OF MASSACHUSETTS

Mr. TROTT. Thank you, Mr. Chairman. Once again, I am pleased to be here today to reaffirm the views of the Department of Justice on one of the most significant law enforcement problems, the laundering of money derived from criminal activity.

I originally testified on this subject before the committee on October 29, 1985. On that occasion——

The CHAIRMAN. Excuse me just a minute. I have just been told that the other witnesses who testified in this matter have been put under oath, so it might just save time if you will both stand.

Do you swear that the testimony that you give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TROTT. I do.

Mr. WELD and Mr. DIONNE. I do.

The CHAIRMAN. All right, you may proceed.

Mr. TROTT. On the occasion of my earlier testimony, I went into the details of the administration's proposal to prohibit money laundering, which became S. 1335 and which was introduced in the House as two identical bills by, of course, different numbers.

I would respectfully request, Mr. Chairman, that my testimony of October 29, 1985, be incorporated in the record today. It makes clear the particular reasons why the Department of Justice feels that there is a definite need for approval of a crisp and comprehensive money laundering bill and explains the nature and reason for inclusion of its specific provisions.

The CHAIRMAN. You wanted your testimony from the previous hearings placed in the record, you said?

Mr. TROTT. Yes; Mr. Chairman, with your permission.

The CHAIRMAN. Would it be satisfactory if we just hold that in the committee or do you especially want it in the record?

Mr. TROTT. At the Chairman's pleasure, as long as it is a part of the record, one or the other.

The CHAIRMAN. Well, one or the other, we will assess the best place for it. Thank you. Go ahead.

Mr. TROTT. I stressed in that testimony that, in spite of the successes that U.S. law enforcement agencies have achieved in the war against drug trafficking and its close partner in crime, money laundering, through the use of the Bank Secrecy Act, its inherent limitations and the limitations imposed by some provisions of the Right to Financial Privacy Act were such that we are falling short in providing law enforcement with the right weapons to use against money laundering. I also pointed out that a then recent appellate court decision had dealt a severe blow to our efforts in using the reporting requirements of the Bank Secrecy Act to identify money launderers.

The *United States* v. *Anzalone* decision by the U.S. Court of Appeals for the First Circuit issued July 1, 1985, reversed a conviction based on the Government's theory of the illegality of structuring separate currency transactions of less than $10,000 to defeat the filing requirements of the Bank Secrecy Act. "Structuring," as used by the Government in criminal prosecutions under title 31 of the U.S. Code, consists of breaking up currency transactions of more than $10,000 into separate smaller transactions in order not to trigger the CTR filing requirements.

Since that first adverse decision and since the last time I appeared before this committee to testify on this subject, two other courts of appeals and one district court have partially or entirely followed in the first circuit's footsteps and reversed convictions for structuring. All of our efforts at curbing what we believe to be illegal activity otherwise known as smurfing have either been wounded or killed by these decisions.

Recently, in *United States* v. *Giancola,* another decision came down and essentially what these decisions are unfortunately doing is providing a blueprint for money launderers, describing very carefully where the loopholes in current law are so that they may then exploit those loopholes and continue to launder their money.

The administration is trying to diminish the devastating effects of these adverse court decisions by effectuating changes to the applicable regulations to bring them within the framework of what would be allowed under the court decisions. However, even if certain regulatory changes went into effect tomorrow, the fact remains that the Bank Secrecy Act and its regulations, with all the possible feasible amendments, would fall short of giving law enforcement the effective tools it needs to combat money laundering.

There is only so much that we can do by regulation to prevent structuring without imposing undue burdens on the overwhelming majority of innocent people. You should not be misled by the success stories you are about to hear, dealing with effective prosecutions under the Bank Secrecy Act, in believing that the act is a totally effective tool against money laundering. There are many forms of money laundering which are not covered and possibly could never be covered by the Bank Secrecy Act even if further amended. Criminals have proved to be very imaginative in circumventing even the best drawn regulations.

However, S. 1335, which the Justice Department and the Treasury Department fully support, is an effective tool. It would give Federal law enforcement a lethal weapon in its war against organized crime. The money laundering bill would directly prohibit money laundering so that the only limitations on our ability to prosecute would be those arising from the nature of the available evidence. The act would hit criminals where it hurts them the most, in their pockets.

Essentially, Mr. Chairman, what we are doing in the area of money laundering is what we did some 15 or 16 years ago to organized crime. Before the end of the 1960's, when we were dealing with the Mafia and organized criminal groups, we sort of chipped away at them by bringing individual charges for assault, for extortion or for arms violations, and we really were not getting anywhere at the activity or the organizations themselves.

Then the Congress gave us the RICO law which essentially said racketeering itself is a crime and punishable under the law. Well, that is where we are now in money laundering. We have been chipping away and doing well with the Bank Secrecy Act, but we have to say that money laundering itself is a crime and go after it on that basis. That will close the loopholes that are currently in the law and shut down to a great degree some of the activity which we have been coping with for the last number of years.

This remains a significant problem and there is one other area of it which I would like to take 5 minutes of your time, Mr. Chairman, to address, and that is the response of the banks.

Any analysis of the bills indicates that there will be new responsibilities required of financial institutions in the United States and we have heard some talk that, well, these responsibilities are onerous or they are difficult or whatever, and I suggest that that really is not the case at all.

A number of years ago in the Caribbean we were faced with a very difficult problem, jurisdictions having bank secrecy laws that prevented us from getting at bank information which we needed to pursue either money launderers or drug traffickers. By a series of long and complex negotiations, we have begun to break open the bank secrecy jurisdictions and in so doing we have had numbers of meetings with bankers, primarily from Canada.

At first the bankers from Canada showed a certain reluctance to acknowledge the problem with which we were confronted, but after we showed the bankers from Canada essentially that their banks were being used as functional accomplices, unwittingly albeit, of drug traffickers, the bankers in Canada decided that they were going to become part of the solution rather than part of the problem. And I am pleased to tell you, Mr. Chairman, that the Canadian banking association and representatives of the Bank of Montreal, the Royal Bank of Canada, the Canadian Imperial Bank of Commerce, the Bank of Nova Scotia, the Toronto Dominion Bank, and the Canadian Bankers Association itself have embarked on a very aggressive program to harden the target and to make sure that their financial institutions stand up against money launderers and drug traffickers and other criminals.

With your permission, I have a very short segment of a tape that I would like to play for this committee. This is a tape prepared by the Bank of Nova Scotia to show to its tellers and operations managers to make sure, as I said, that the banks identify money launderers and criminals and keep them out of their institutions.

[Video tape shown.]

Mr. Trott. This is being shown as a training tape, as I said, to tellers and operational people.

Mr. Chairman, I very much appreciate the opportunity to show this tape. Again, like I say, it shows what banks and financial institutions can do when they put their mind to becoming part of the solution, rather than allowing people to abuse their financial institutions for the laundering of money.

The Bank of Nova Scotia also puts up signs in its banks and trains its tellers to be very careful of suspicious customer activities:

"We will do nothing to assist any deception and we will follow sound banking practices for all transactions," it starts out by saying. "If you are uncomfortable with your customer, don't break the audit trail. Remember the identity of your customer, the source of the funds and the legitimacy of the transaction." And I think what it shows there is the attitude that is very important.

So I would suggest with respect to some of the technical requirements of the legislation before the Senate and the House, Mr. Chairman, that banks will be capable of doing what will be expected of them and, with the kind of attitude shown in this tape which is being found in many other places now around the country, we will be able to put a dent in this activity.

I would be pleased to answer any questions that you or the committee might have.

The CHAIRMAN. Do you have an opening statement?

Senator METZENBAUM. No opening statement.

The CHAIRMAN. Mr. Trott, in your prepared statement you have expressed concern about the adverse impact that recent court decisions have had on your efforts to identify and prosecute money launderers through the reporting requirements of the Bank Secrecy Act. Could you detail the problem and propose what changes either in law or Treasury regulations might address this troubling question?

Mr. TROTT. Essentially, Mr. Chairman, the courts are holding, some of the courts are holding that individuals do not have a duty to comply with the law in these subjects and therefore if they figure out ways to structure transactions to get under the $10,000 amount by making a series of $5,000 deposits, for example, at different branches of the same bank on either the same day or different days, neither the bank—the bank is not responsible for filing the currency transaction reports and the individuals cannot be prosecuted for either conspiracy to defraud the United States or making false statements to the U.S. Government.

There is a split right now that is occurring in the circuits that more often than not, the cases are coming down and holding that, unless you are dealing with $10,000 deposits on a single day in one lump sum at a single bank, the bank secrecy laws just simply do not cover it.

So as I indicated before, these court decisions are providing a blueprint for "smurfs" or money launderers and essentially telling them, look, if you take large sums of cash and make it into amounts that are smaller than $10,000 and go into different branches of the same bank, either on the same day or on different days, the whole Bank Secrecy Act is defeated completely and you are left with absolutely nothing.

So we think that although those regulations can and will be tightened up to help us in this area, what we really need to do is stop chipping away at the edges and come into the middle with a sort of thermonuclear approach, called money laundering and wipe out all the problems that are being created by the bank secrecy law, and the very intelligent smurfs who are figuring out ways to defeat it.

The CHAIRMAN. The administration then, to answer this problem, has come up with a bill. Do you have a brief synopsis that you can give us of that bill, without going into too much detail?

Mr. TROTT. Yes, I do, Mr. Chairman. Essentially, it says that anybody who conducts a transaction involving the movement of funds by wire, or other electronic means involving one or more monetary instruments in any way, or degree affecting interstate or foreign commerce, through or by a financial institution, which is engaged in interstate or foreign commerce, with the intent to promote, manage, establish, or carry on any unlawful activity, or knowing or with reckless disregard of the fact that the monetary instruments represent the proceeds of, or are directly or indirectly involved as proceeds of unlawful activity, is guilty of the crime of money laundering which could be punishable by very large fines, and 20-year imprisonment and forfeiture of the financial resources that are involved.

The CHAIRMAN. Mr. Trott, how satisfied is the Department of Justice with the efforts by banks to comply with the reporting requirements and the assisting of investigation of violations under the Bank Secrecy Act, and what improvements can be made under the existing law?

Mr. TROTT. Mr. Chairman, I think that we have really turned the corner in some respect on this, as was indicated by the tape that I showed, we have made significant progress.

I also might let my colleague, Mr. Weld, address this. He has been very much involved in enforcement in the field and can tell you from his own personal experience what the various attitudes of financial institutions in this country now are.

Compliance is up 400 percent since 1981, I am advised, in the filing of currency transaction reports and compliance with the bank secrecy laws.

The CHAIRMAN. Thank you.

The Senator from Ohio.

Senator METZENBAUM. Mr. Trott, in the last 5 years how many instances has the Department of Justice dealt with the issue of money laundering and brought some action in courts?

Mr. TROTT. Senator, I would direct your attention to a book that has been put out recently by the Department of Justice called "National Drug Enforcement Policy Board, Federal Drug Enforcement Progress Report for 1984 and 1985," and in there essentially we have chronicled the results of the Organized Crime and Drug Enforcement Task Force and we have a number of tables showing the manner in which drug trafficking is attacked. Specifically referring to table II.17, it indicates that in calendar year 1983 the number of money laundering activities involved in investigations was 237, involving 50.7 percent of the cases.

Senator METZENBAUM. Those were investigations?

Mr. TROTT. Yes, money laundering investigations, drug cases involving money laundering investigations. It went up—if I can just continue with that for one second——

Senator METZENBAUM. Sure.

Mr. TROTT. The figure went to 191 in 1984, 217 in 1985, for a total of 645, and that would involve 55.5 percent of the cases.

The number of indictments and——

The CHAIRMAN. Mr. Trott, would you let me interrupt for a minute. The distinguished Senator from Pennsylvania has got to leave. Would you like to make a brief statement?

Senator SPECTER. Twenty seconds, Senator Metzenbaum?

Senator METZENBAUM. Thirty.

Senator SPECTER. I just want to commend you, Mr. Chairman, for convening these important hearings. I am submitting some questions for the record. I regret that I cannot stay to hear the distinguished witnesses, Mr. Trott and the U.S. Attorney from Massachusetts, but I just want to leave these questions. Thank you, Senator Metzenbaum. Mr. Chairman, I thank you.

[The questions of Mr. Specter follow:]

The CHAIRMAN. Senator, you may proceed.

Mr. TROTT. Table II.21, Senator Metzenbaum, indicates the number of indictments and informations involving money laundering, 49 in calendar year 1983, 110 in calendar year 1984, 141 in calendar year 1985, for a total of 300, and a frequency of 16.1 in terms of overall investigations involving drug cases.

Senator METZENBAUM. Were those investigations or indictments?

Mr. TROTT. These are indictments and informations involving money laundering.

Senator METZENBAUM. And of the 316, did anybody go to jail?

Mr. TROTT. Yes.

Senator METZENBAUM. How many?

Mr. TROTT. Off the top of my head, I cannot give you that figure. I would be very pleased to attempt to answer that for the record.

Senator METZENBAUM. Would you guess that it was 10, 50, 100? The real thrust of my question is that you have had some cases, where you go to indictment or you go to trial or you take a plea bargain. One of my concerns is whether the Department of Justice has been willing to effectively enforce the law when they found somebody with their hands in the pot or whether they have just let them off with a slap on the wrist. Therefore people can afford to play games with money laundering. Have you done anything—the real thrust of my question is how tough has the department been?

Mr. TROTT. The last significant sentence which I am advised of by Mr. Saphos, who runs my Narcotics and Dangerous Drug Section, just a few weeks ago was some 30 years to a man who was engaged in the laundering of $151 million, I believe in 1983. We could provide for you, Senator, a list of significant money laundering cases in which individuals have been identified as such and gone to jail.

I might add that usually money laundering is a charge that is brought along with other charges against individuals. Frequently it involves drug traffickers and other criminals and I can assure you that our objective is to immobilize the people engaged in this activity and cart them off to Federal prison where they deserve to serve significant sentences.

Senator METZENBAUM. Am I not correct, Mr. Trott, that in order to be effective bankers have to cooperate?

Mr. TROTT. Yes; that is a fair statement.

Senator METZENBAUM. The real thrust of my question is not about the criminal who has been guilty of egregious conduct. What I am questioning is whether or not you have sent any bankers to jail. Every 2 weeks, every month I pick up another article about some big bank that admits that they have been involved in $10 million or $100 million or whatever the case may be of money laundering. All they are saying that they are sorry and they are going to do better next week.

My question is have any of those bankers gone to jail?

Mr. TROTT. One second, Senator.

In one operation, the details of which we could provide you if you wish, a number of bankers were both indicted, convicted and sentenced to prison.

Senator METZENBAUM. Since that is a matter of public record, can you tell me who was involved and what happened?

Mr. TROTT. Well, I can provide that for the record with all the detail you wish. Off the top of my head, I cannot.

Senator METZENBAUM. Can you give me some idea of where we are talking about? Is this the Bank of America, is it the bank up in Boston, is it Jay Butcher down in Tennessee? What are we talking about?

Mr. TROTT. Well, it was not the Butcher bank. In the Butcher bank cases, Mr. Butcher and his cohorts are going to Federal prison for activities that do not involve money laundering. As you know, Senator, the Butcher banks resulted in Federal prison sentences for some people, and there are still other cases outstanding.

Senator METZENBAUM. I understand that, but just who did go to jail? You say in one bank a number of officials went to jail. Who?

Mr. TROTT. We will provide you with a list.

Senator METZENBAUM. I want to know where the bank was?

Mr. TROTT. We will provide you with that information for the record.

Senator METZENBAUM. I want to know now. You must know the answer to that. You are sitting here in front of me, so you can tell me the answer.

Mr. TROTT. Senator, I do not have——

Senator METZENBAUM.—You can't name one in the whole country.

The CHAIRMAN. If you know or not, it you know tell him, if you do not then we will let him supply it for the record.

Mr. TROTT. I do not have that information on the top of my head. I can have a conference with Mr. Saphos and we can do our best to try to recreate it.

Senator METZENBAUM. Do you know where it is, sir? Do you know which bank you are talking about?

Mr. TROTT. We are dealing with nine banks. These are located in Puerto Rico. We do not have those names on the top of our heads and we will supply them for the record.

Senator METZENBAUM. Are they Puerto Rican banks?

Mr. TROTT. These were.

Senator METZENBAUM. And no bankers who are on the mainland have gone to jail for money laundering, is that correct?

Mr. TROTT. It is not correct. There have been and we will supply you a list of these for the record.

Senator METZENBAUM. Would you say, Mr. Trott, that there have been lots of them, few of them, very few of them, one, six, nine?

Mr. Trott. Senator, I would not hazard a guess before this committee because it simply might be misleading. I would rather take the time to provide you with the information that you request so that the record will be crisp and precise, rather than full of speculation which would not be helpful.

Senator Metzenbaum. I think that you know, Mr. Trott, that some of us have the feeling that white-collar criminals in this country have had a free ride during the past 5 years. I am trying to find out to see how tough you have been with respect to bankers. If you knew of them, since you are the head of that department, you would be able to specify, the bankers in this city or that city or some other city.

You said there were 316 cases in the last 3 years. It would appear as if very few bankers who were found guilty or plead guilty have paid much of a penalty. Is that a fair statement on my part?

Mr. Trott. No.

Senator Metzenbaum. Tell me the facts. I do not want to know for the record, I want to know today.

The Chairman. Senator, he says he does not have the information today.

Senator Metzenbaum. The man sitting next to him has information.

The Chairman. If he does we will call him as a witness. Does anybody else have the information? Does your assistant have the information?

Mr. Trott. Not in that specific detail. Senator, in case you are concerned about the effectiveness of our white-collar crime enforcement program, with your permission I would ask if you have had an opportunity to read the submission that was provided by Mr. Jensen when he was here during his previous testimony?

Senator Metzenbaum. Mr. Jensen told me, we will be back and you will be able to ask us those questions. I asked him some specific questions and that is exactly what he told me. He said, well, when we get back, I would rather not address myself to those issues today, but when we come back we will be glad to give you the details. You are now back and you are telling me I am going to get it for the record.

What I am saying to you is I do not know what the facts are. You people have access to the facts. I think it is a very reasonable question to ask how many people have gone to jail for money laundering. This is an oversight hearing on that issue and you come before us and say we will provide it for the record and then we find that there is one group of banks in Puerto Rico. I have not heard about those, but I have read about big banks in this country being involved in money laundering, having permitted it to occur, violating the law, and I am trying to find if you have really been tough or have you just been soft on white-collar crime.

Mr. Trott. And I have simply suggested, Senator, that you will find a considerable answer to your question if you take a look, if you have not had the time to do this already, at the submission that has been provided, a chronicle of significant cases, significant results of white-collar crime prosecutions all across the spectrum, all across the country, including financial institutions.

One single case does not a program make, but I would suggest if you look at——

Senator METZENBAUM. I have just asked the staff. I have not seen the book. They tell me it is a book that is a compendium of hundreds and hundreds of cases. You are here at a hearing on white collar crime and it would seem to me, Mr. Trott, that you would be able to tell us what the Department of Justice has done with money laundering cases in which the Department has been involved, rather than referring me to some book that I am told is quite a piece of work in order to sift through to find which ones are which. I think that is your responsibility, not mine, to find that information.

The CHAIRMAN. Mr. Trott, can you supply for the record and to Senator Metzenbaum the answer to the questions that he has asked?

Mr. TROTT. As I indicated, we would be most pleased to do this.

The CHAIRMAN. How soon can you do that, Mr. Trott?

Mr. TROTT. We should be able to do that within a week.

The CHAIRMAN. Within a week?

Mr. TROTT. Yes.

The CHAIRMAN. OK. Senator, you may proceed.

Senator METZENBAUM. I have no further questions. I must say that I am disappointed because I do not want the information in a week. If it is so easy to obtain, pick up the telephone and let somebody look at the book and give us the answer. I think that the department does not want to come forward and tell us the problems with respect to the prosecution of white collar criminals in this country, particularly in this area. In my opinion you have not done the job that the American people have a right to expect of you.

The CHAIRMAN. The distinguished Senator from Kentucky.

Mr. MCCONNELL. Mr. Chairman, I really have no questions. I just want to hear the testimony of the witness.

The CHAIRMAN. Thank you very much.

The distinguished Senator and ranking member of the committee.

Senator BIDEN. Mr. Chairman, thank you very much. My staff is getting a copy—if I recall, I only perused it, the compendium is a series of 8-by-11 sheets of paper that list each case, if I am not mistaken, is that what we are referring to by the compendium of——

Mr. TROTT. Yes, it is a rather large book that was actually submitted containing descriptions of the cases in our priority areas in the last, decided in the last year.

Senator BIDEN. Mr. Trott, obviously Senator Metzenbaum's frustration is one that quite frankly I kind of share and that is that you are up here on hearings on money laundering and I would think you would know literally off the—I mean you are really an informed guy and we have been able to deal with one another for a long time now and I must tell you that I am a little surprised that you do not have more factual information. Either you did not take this very seriously or we just caught you off-guard.

You see, the problem with not—you know how this place works, and that is what disturbs me, is that we are going to be in the next set of hearings on E.F. Hutton by the time we get the answers on this and it just moves along so quickly.

Let me ask you this and you or your colleague can answer: What are the guidelines, and if you have them, if there are any, could you give us a copy of them as to how to prosecute money laundering cases? Do you actually have, you know, like you do in many other areas, do you have a set of guidelines set out for the prosecution of money laundering cases?

Mr. TROTT. We have significant documents describing the requirements of money laundering prosecutions under title 31 and we do have a number of monographs that have been prepared to assist prosecutors around the country and we will supply those to you.

Senator BIDEN. You are in the field, correct?

Mr. WELD. Yes, Senator.

Senator BIDEN. And you have prosecuted these cases, correct?

Mr. WELD. Yes, Senator.

Senator BIDEN. Can you tell me what the guidelines are?

Mr. WELD. I think the touchstone, Senator—if I may, Mr. Chairman, out of order——

Senator BIDEN. It is OK. He is the boss though, if you want to double-check.

The CHAIRMAN. You may proceed.

Mr. WELD. Thank you, Mr. Chairman. The language of the statute and the provision in title 31 that has been involved in the cases that we have had against banks requires a willful failure to file the required forms, and there is no magic test as to what constitutes sufficient evidence of willfulness to proceed under that statute which would be distinct from any other of the many statutes requiring knowledge or willfulness as an element of the statute. But such indicia of willfulness as knowledge of a duty to file, an antecedent relationship between the bank and the customer, any evidence of payments out of the ordinary course of business flowing between the customer and the bank or bank personnel, any evidence that the bank may have had suspicions of illegal activity on the part of the customer which might have been a source for the funds, those would be four or five of the things that you would look for in determining whether or not to make the charging decision to proceed against a bank.

Senator BIDEN. I am not trying to nit-pick here, but correct me if I am wrong. In certain areas of criminal investigation and prosecution, there are actual specific guidelines that are written out that a prosecutor can lay his hands on in order to refresh his or her recollection as to how to proceed and under what circumstances to proceed. Am I wrong about that?

Mr. WELD. I do not think this area is different, Senator. There are monographs in this area, there are—you know, how to go about investigating——

Senator BIDEN. And you will submit those for the record?

Mr. WELD. We will provide everything we have along those lines. Essentially the difficulty——

Senator BIDEN. But I would like you, when you send that up to us, I would like to be able to make it easier for me because like you were busy and I would like to see it, not my staff. Put a little tab on it saying "these are the guides, this is the monograph that sets out the guidelines of how to prosecute money laundering cases."

Mr. **Trott**. If I may, Senator, one of the reasons why we are here is because we are having a very difficult time devising guidelines. We have in my testimony laid out a number of cases—and I referred before you got here to another case—the circuits, the appellate courts of this country under Federal law are splitting all over the lot and they are telling us in one circuit you cannot do it this way, in another circuit you can do it that way. I have been involved in four meetings with the Solicitor General's office to try to determine what legal theory we can proceed under, and it seems that every 2 or 3 weeks the law shifts on us and we find another gigantic loophole in the Bank Secrecy Act that takes away from us part of the tool that we thought we could use effectively, and this is exactly one of the reasons why we think a comprehensive money laundering statute is absolutely essential.

This is a moving target, just as reasonable people are differing on the same issue because they are so very close primarily on the question of whether or not there is a duty on the part of individuals with respect to the Bank Secrecy Act, or whether all the responsibilities are on the financial institutions themselves. They are splitting on this.

If there is a duty on the part of individuals, then they can be prosecuted for conspiracies in 18 U.S.C. 1001. If there is no duty, then they cannot, and until this is settled we are going to find ourselves in a situation where, as I say, the guidelines, we do not know what to start a hook on. It has not gone to the U.S. Supreme Court yet and in some cases we have decided not even to pursue certiorari.

What I can tell you is that the only solution to this is to tighten up some of the regulations which we are doing, No. 1, and, No. 2, to get a money laundering bill.

As I said before you were here, what we have to do in this area is the same thing that was done with racketerring and the RICO law. We were chipping away with individual charges against racketeers and getting nowhere until somebody rose over the forest and said what we need is a RICO law that says racketeering is a crime, if you engage in an enterprise with predicate acts, that is all you need, and we are now in the equivalent situation with money laundering. We are chewing away with the Bank Secrecy Act. The courts essentially are providing blueprints to the smurfs and money launderers as to where the loopholes are and how to structure your transaction to avoid the bank secrecy law. By coming in with money laundering as a crime, then we will be able to promulgate guidelines that will be clear to everybody.

Senator **Biden**. That is the Steve Trott I know. Why did you not answer the question that way, sir? You see, do not play games with me. You do not have sufficient guidelines and the reason you do not is the reason you stated. I am with you. I agree with you. So let us stop playing around.

Sir, I apologize, your name again?

Mr. **Weld**. William Weld, Senator.

Senator **Biden**. Mr. Weld, it seems to me that it is not the same as it is in other areas, Mr. Trott's answer. Now, do you disagree with Mr. Trott's answer?

Mr. **Weld**. Well, there is a booklet entitled "Money Laundering Prosecutions Under the Bank Secrecy Act."

Senator **Biden**. I know. I understand that.

Mr. **Weld**. And if you picked it up, you would think that the way to reach the individuals was by a conspiracy to defraud the United States or a section 1001 false statement count, the notion being that conspiracy is an inchoate offense so that it ripens at the time the individual hatches the scheme to get around the statute. That is what we thought the law was when we indicted the *Anzalone* case which became the adverse precedent in the first circuit.

Mr. Trott is correct that the recent court decisions are creating a certain amount of confusion about exactly what theories can successfully be pressed, but in terms of guidelines, I think there are more guidelines in this area than there are, for example, for counterfeiting cases.

Mr. **Trott**. And as a matter of fact, because this is a new area, many of the training conferences that we have, we have experts that stand up and say here is how you do it. I have attended those lectures and I sit there taking notes, thinking this is the way you load the gun, point it, and pull the trigger at money launderers. Three days later a court case comes down and it says no bullets, no gun, and pointed in another direction.

I think what Mr. Weld and I are saying is not at all inconsistent. We do have books, we do have guidelines, we do have training courses, but they have all been thrown to the winds by the appellate courts.

Senator **Biden**. Now, Mr. Weld, you are a U.S. Attorney who has made both criminal and civil cases in the money laundering area, is that correct?

Mr. **Weld**. Just criminal, Senator.

Senator **Biden**. Just criminal. Can you tell me whether or not it is possible to make a civil case in the money laundering area?

Mr. **Weld**. Yes, the responsibility for that rests in the first instance with the Department of the Treasury, I believe, to impose the assessment, and if the assessment is not paid then it gets referred to main Justice and up to the civil side of the U.S. attorney's office.

Senator **Biden**. Would you make an inquiry as to whether or not the civil route is also being——

Mr. **Weld**. We have found in the last year and a half, Senator, that the defense can be relied upon to make that inquiry and to raise it at the earliest possible moment. As soon as they find out that there is a prospect of a grand jury investigation, the question is always raised whether this matter "should go civilly."

Senator **Biden**. Have you done both?

Mr. **Weld**. We have not. We have done only criminal.

Senator **Biden**. But in the criminal cases that you have pursued, do you know whether or not there has also been a pursuit of the civil case?

Mr. **Weld**. I do know, and there has not been as part of our cases. That is without prejudice, without the right of Treasury to revisit the matter unless Treasury signs off at the time.

Senator **Biden**. One of our problems, as Mr. Trott pointed out, is we have had a RICO statute since 1970 until we found out under the Carter administration that no one knew how to use it. It was a little bit of a problem. And we found out that you really did not have to rewrite the RICO statute sufficiently. All you had to do is get you all to know how to talk to one another, start to work with one another.

Now you are sitting here telling me what all bureaucrats tell me, "Well, that is a Treasury matter, and they take care of Treasury, they take care of the civil stuff and we take care of the criminal stuff." One of the problems we had with RICO was just that thinking, until under this administration they changed their thinking and they understood that the civil side of RICO was sometimes considerably more potent than the criminal side of RICO, and sometimes you use both. Now, why the heck are you not all thinking that way? Now, answer my question again, Mr. Weld. Is there any reason why you did not inquire, and did you inquire and, if you did, what did you do?

Mr. WELD. The Treasury Department, these cases that Senator Metzenbaum referred to involving the big banks which have been in the news the last year, many of those outside of our district have been civil penalties, some of them very large, imposed by the Treasury Department.

All I am saying is that the U.S. attorney's office for the district of Massachusetts has not been imposing civil fines because that is a matter not within our jurisdiction.

Now, if you are drawing the analogy to civil RICO, it is within the jurisdiction of the Justice Department to initiate a civil RICO action; but I think there is a bifurcation under title 31 between the civil and the criminal side.

Mr. TROTT. Senator, maybe I can add some information to that.

Senator BIDEN. Sure.

Mr. TROTT. Within the last month, Mr. Queen and I have talked on a couple of occasions and what is clear is we can do a better job in coordinating between Treasury and Justice, and the question is how do you do this. In the first instance, frequently these matters come to the attention of the Treasury Department and they have jurisdiction to assess rather large civil penalties, but the question is do you want to do that right away or do you want to refer it right away for criminal prosecution. And the problem that we found ourselves in more often than not is if Treasury does a civil number on the bank, by the time it gets to the criminal side of the shop some of the steam is out of it.

On the other side of the coin, if you refer it right away to the criminal side of the shop, because these are complex and take a long period of time, by the time you get back around to the civil side some of the steam is taken out of that.

Mr. Queen and I decided in principle that the best way to do this is to devise a structure whereby the steam is taken out of neither side of the shop and that we work a way to identify early those cases that should be civil and have no criminal potential and those cases that should primarily be criminal because they have other ramifications and those cases that should be both. So we are moving together to make sure that the right hand and the left hand do what you suggest.

Senator BIDEN. Well, you understand that that, like many things I say, sounds good and we look forward to seeing it. You were here when I was questioning Mr. Queen. You recall, I was pursuing this line of questioning with him. He acknowledged that he has a phenomenal backlog, he acknowledges that he has this problem that relates to the ability to disseminate the information to you all in Justice, he acknowledges that there is a difficulty in terms of under what circumstances there are red lights that go on to say this case is a particularly difficult one, and the reason I raise it is to state the obvious: You are back in here for new legislation.

Mr. TROTT. That is right.

Senator BIDEN. Just like they were back here under the Carter administration for new legislation on RICO, and it turned out——

Mr. TROTT. Not us.

Senator BIDEN. No, not you. I know that. I am making the point though. And it turned out, by not using what is available to you—you, meaning in the generic sense the Justice Department of RICO, we found you could do a whole heck of a lot better job. There was not nearly the need to expand the law as much as was being requested in the last administration.

I have not reached a conclusion yet, but before I can reach a conclusion, when we go into these privacy matters relating to money laundering, I am a good old conservative. If the law on the book can do the job, then let us not have a new law on the books, and so the thing we have to find out—and we are having trouble with it and, to tell you the truth, I am coming up with a, to use an oil well metaphor, with a dry hole as to how good a job you all are doing with what you have, and so far—I am not being critical of you specifically, but because this is such a phenomonally large field, because the dollars are so big and because it has been bifurcated, to use the phrase that was used earlier, between Treasury and Justice, I have reached the tentative conclusion that you all have not fully implemented what is available to you, let alone make judgments about whether or not we are going to change the law.

Mr. TROTT. If I may address that specifically, Senator——

Senator BIDEN. Sure.

Mr. TROTT [continuing]. Because I was here last week when you asked it, and I would have asked the same question had I been in your seat.

What Mr. Queen did not have the opportunity to get into was something that is called TFLEC, the Treasury Financial Law Enforcement Center, and this deals with the currency transaction reports and in making sure that the bank secrecy law, the Bank Secrecy Act information is turned not only to computer banks of information but to tactical use against money launderers and criminals.

TFLEC is physically located in the headquarters of the U.S. Customs Service here in Washington, DC, and the last that we looked it had a group of 30 intelligence analysts who examine the information in the data base to determine specifically if there is a need for criminal investigation, whether that is indicated. These analysts also collate the information from the data base with other intelligence information to create reports which may result in criminal investigations, and they take a look at this information and they use artificial intelligence and other processes, including common sense, and examine the data by geographic region to determine if there are current anomalies, they use information from Federal Reserve, they use——

Senator BIDEN. But they have not gotten many results. It reads well.

Mr. TROTT. Twenty-five percent of our pure money laundering cases come from TFLEC investigations. TFLEC also has computer terminals. We tried to find out how many and they could not even count them all. This information is accessible around the country in the offices of the organized crime drug enforcement task forces, to Customs, IRS, the FBI, DEA, ATF, and——

Senator BIDEN. It is all accessible but it is not disseminated.

Mr. TROTT. It is, Senator, and that is what I am trying to indicate. Not only is it disseminated, it is collected, it is analyzed, it——

Senator BIDEN. Well, maybe you could submit for us just a——

Mr. TROTT. I can give you an example of what TFLEC has done recently.

Senator BIDEN. OK.

Mr. TROTT. For example, a report generated by TFLEC showed that geographically financial institutions in Puerto Rico were filing fewer CTR's than their regular cash flow should generate. As a consequence, the Department of Justice and Treasury initiated something that was called Operation Greenback in Puerto Rico. This operation is continuing and has resulted already in convictions of 17 individuals, one savings bank and a corporation for money laundering activities.

In addition, Greenback Puerto Rico has resulted in the seizure of $5.7 million in monetary instruments and the implementation of half a million dollars in fines.

Senator BIDEN. How long was TFLEC up to speed?

Mr. TROTT. TFLEC has been up to speed since I was a U.S. attorney and, with your permission, I will see if Mr. Saphos knows.

I do not know when it was actually started, but when I was in charge of the financial investigations task force out in Los Angeles, we were using TFLEC at that time and that is in 1982.

Senator BIDEN. My recollection is that Mr. Queen indicated that it takes 6 to 8 months to get it on TFLEC computers.

Mr. TROTT. That may be. I do not know the answer to that. If he said it, I assume it is correct.

Senator BIDEN. I think that is correct. Your guy behind you is trying to get your attention. I think that is—I know I cannot do it all myself and I do not think you can either.

Mr. TROTT. One of the contributing factors was the move of the computer center from Ogden, UT, to Detroit, and Mr. Saphos tells me that that did slow things down.

Senator BIDEN. Well, I understand they are still 6 to 8 months behind. Let me ask you another question, you or Mr. Weld. Was any consideration given to seeking civil sanctions, that is the injunction under RICO against banks or individuals in any of the cases, either you individually, Mr. Weld, and/or the Justice Department has prosecuted, because you can in fact employ RICO here, too? Have there been any, can you name any cases for me?

Mr. WELD. I can speak to that, Senator. Of the cases brought against banks, I think we have had five of the eight in the last year that have been in Massachusetts, but those were addressing conduct that occurred before October 1984, so that title 31, the money laundering provisions, would not have been a predicate offense for the RICO statute, so the question of equitable remedies against the bank or divestiture did not arise in those cases.

I happen to be a fan of the civil RICO statute and I share the Senator's suggestion or implication that, with money laundering being a predicate offense under RICO, that that statute has application.

Senator BIDEN. I do not know what the terminology is in the Justice Department, but have U.S. attorneys, for example, gotten memorandum or sheets of paper indicating, "By the way, ladies and gentlemen, we haven't been doing it, but now under the law it can be a predicate offense, you can enjoin the bank from—you can use civil RICO to," et cetera. Has that been done?

Mr. TROTT. Yes; we put out a very large—again another orange—document about the Comprehensive Crime Control Act, and in that highlighted prominently, are the new changes. I must, at the risk of getting into something that I can avoid very easily by just not bringing it up, I have some concerns about using RICO in this area.

RICO is what I call a thermonuclear statute. It has repercussions and ramifications that go far beyond any particular individual case, and I think we have a responsibility before we start utilizing the RICO statute against what are ordinarily well respected financial institutions to think this through very carefully. We do not want to overkill and overcharge just for the purpose of making a splash that is larger than the splash that ought to be made.

Senator BIDEN. You see, that is where Senator Metzenbaum and I have a little disagreement with you. You see, that is really the essence of our criticism, mine. His criticism is probably more substantial than mine. But the essence of it is that we are really gingerly stepping with these white-collar thugs who show up at our country clubs and who know how to mix a martini, but we do not gingerly step when we are not talking about "honorable, decent"—I heard in the civil RICO hearing, all of my friends, as we say, in the banking community and the business community, talking about how could you talk about us as racketeers, how could that be something that we could be involved in.

Well, I would suspect, gentleman and ladies, who you prosecuted in Boston, it as much damage and harm to humanity as a consequence of their being part of the scheme to be involved in cheating Americans out of their lives as any thug in my community running around carrying an automatic pistol shooting people, literally. You see, that is where we end up having problems.

Mr. TROTT. Senator, we do not tread gingerly at all in this area, but we do try to be sure that when we move, we move on the basis of solid information and very good thinking.

Let me tell you what we do with criminal RICO. You may know this already. There is a single group in Washington that analyzes all criminal RICO cases before they are brought, to make sure that they are brought clearly within the scope of congressional intent and the scope of the law as it now stands, just to make sure that we are doing what you expect us to do, and that is, enforce the law faithfully and not be on the boundaries of what is expected.

Our objective in prosecuting white-collar cases is to prosecute both the institutions that are responsible for the activity and the individuals within the institutions who make it happen, and our primary goal is to make sure that sanctions, including prison for the individuals involved, are significant enough and heavy enough so that they act not only with respect to making sure justice is secured in this case, but is a deterrent to all other similarly situated who may be contemplating this type of activity. And that is why I showed this videotape before you got here, to indicate the levels at which we have finally gotten the attention of CEO's in the kinds of corporations that you are talking about.

The message has now gotten across to these people and I could, at your convenience, show you this videotape and I think you will see an attitude change in the Canadian banks that 4 or 5 years ago were a problem. They are now part of the solution and I think this attitude change is occurring everywhere and it is because—and I agree with both you and Senator Metzenbaum—harsh measures have to be taken against white-collar criminals to stop white-collar crime.

Senator METZENBAUM. Mr. Trott, if I could interrupt——

Senator BIDEN. Go ahead.

Senator METZENBAUM [continuing]. Send three bankers up the river for 3 years and you will get a much better message than any TV program telling the bankers what to do. You have not done that.

Mr. TROTT. Yes, we have. We have sent nine in Operation Tracer alone.

Senator METZENBAUM. What is Operation Tracer?

Mr. TROTT. That is the one I told you about 7 minutes ago.

Senator METZENBAUM. The one in Puerto Rico?

Mr. TROTT. Yes.

Senator METZENBAUM. OK. You led me down a path and I thought I was going to go through this book and I was really going to be impressed and I was going to find what you did on money laundering cases. Well, you have got eight cases there, and not one of them has to do with a banker except a little woman. She was assistant vice president and branch manager of a small bank in San Ysedro, CA, and nothing has happened. She is still a fugitive, I believe.

All of these cases—one was the owner of a film production company, one was an assistant vice president and branch manager and is now a fugitive, one was a resident of Tijuana who is a fugitive for $1,739,000, one transferred $1,739,000—it is the same one, unless I am mistaken—from the United States to Mexico, that one is a fugitive. There was a man by the name of Drummond and some others who pled guilty and got 6 months in a halfway house, no money amount involved. Another case was not a money laundering case at all, it was a bribery case, and the other case was a laundering case and there has been no trial in connection with it. Not one of them involved a bank, and that is the issue, Mr. Trott.

The issue is, will the Justice Department mete out justice equally strong toward white-collar criminals, officers of banks who knew full well what they were doing in connection with money laundering cases and cause those individuals to pay a personal penalty. I do not have to tell you. You are smart. If you just assess a civil penalty, $200,000, $500,000, $1 million against a bank, bank officials go out to their country club. They go to their luncheon clubs and they can laugh it off. They got off scot-free, unfortunately.

Let it be some hard-nosed criminal who is on the streets of Wilmington, DE, or Cleveland, OH, or Washington, DC, and that individual gets the book thrown at him or her and winds up going to the penitentiary. What I am asking you is, other than the Puerto Rican cases—has he got some cases up in Boston? They may still be in the litigation process, is that correct, Mr. Weld?

Mr. **Weld**. We have one where we are waiting sentencing and more to come. We are in the middle, I would say.

Senator **Metzenbaum**. Did you have some where they are already concluded?

Mr. **Weld**. Oh, yes, we have had several cases, Senator, and I would like to speak to your question if it is appropriate.

Senator **Metzenbaum**. Tell me.

Mr. **Weld**. We have had five cases involving banks in the last year. For purposes of the record, I will refer to them by name—Rockland, Ausonian, Bank of Boston, Bank of New England, and Provident. And one point which may be of interest to this body is that in a number of those cases, we have indicted tellers and branch managers along with the banks, and the people have been acquitted. In fact, in the Bank of New England trial, which came back from the jury on February 19, I think it was, just a few weeks ago, the bank was convicted of money laundering, of willful failure to file, and the two head tellers and the customer who we had also charged, the customer who had a record for gaming violations and loan sharking—it was his money that was being allegedly laundered—they were all acquitted. The jury was instructed that they did not have to convict an individual in order to convict the bank and they were instructed—properly, I think—that they could aggregate the knowledge of the individuals who worked for the bank in determining the willfulness or knowledgeability of the bank.

So in that sense there may be a different legal standard applicable to these big corporations, the banks, with hundreds of employees; it may be easier to convict them than to convict an individual as to whom you cannot aggregate knowledge.

Senator **Metzenbaum**. Did you indict any corporate officers in any of these bank cases?

Mr. **Weld**. Yes; there was one vice president who was acquitted in a separate trial last year, in the *Rockland* case, and one officer in the *Bank of New England* case.

Senator **Metzenbaum**. You have not had any convictions?

Mr. **Weld**. We have had two or three guilty pleas, no convictions by a jury of individuals, no prison time involved. But I would draw a distinction, Senator, between a case involving a bank's failure to file with the evidence really disclosing no more than that and sloppiness, and the case involving real evidence of hanky-panky between the depositor and the bank. If you have a corrupt bank official, my impression is that those people are going to jail for stretches of time, and we have read all the cases in this area and——

Senator **Metzenbaum**. Give me some examples.

Mr. **Weld**. Well, I am thinking of the lead case in the area for years was——

Senator **Metzenbaum**. Pardon?

Mr. **Weld**. The lead case for years was the *Tobon-Builes* case, and the defendant there was the president of the bank and I cannot remember what sentence he got but I cannot imagine he did not go to jail.

Senator **Metzenbaum**. When was that?

Mr. **Weld**. Oh, I think late seventies or early eighties.

Senator **Metzenbaum**. I am talking about since this administration has been in office. I am trying to find some bank official who has been found guilty, and I think we have read about more bank laundering in the last several years than ever before in my history, in my lifetime. I am trying to find some bank official who really paid a penalty.

Mr. **Weld**. I think the reason you have read about all these cases is the fire storm of publicity that followed the Bank of Boston case in February 1985, Senator. That really riveted the attention of the banking community and the public at large on this problem. So people have been reading about these cases, frankly, that we have brought in Massachusetts. None of those involved—at least according to the juries and the evidence that we had—none of those involved a crooked—yet involved a crooked bank president in league with a dope dealer to launder profits. They involved the bank slipping up, failing to file and sufficient evidence indicia of willfulness, these little things that I was listing for Senator Biden earlier.

You can try to indict individuals as well, but you cannot indict the president of the bank just because you may have enough on an aggregate basis against the bank itself. You cannot attribute to the president of the bank knowledge that a teller may have about the identity of a customer or where a customer got his money from.

Senator **Metzenbaum**. When an officer of a bank suddenly handles large amounts of cash daily, do you think that that does not come to the attention of the bank officer as to why there is so much activity in the Cambridge area or the Lowell area, whatever the case may be? Do you think that does not come to the bank officer's attention?

Mr. **Weld**. That would be a factor that I would argue for the prosecution, if there was a little old branch office that was suddenly coming up with $10, $20, or $30 million a day, certainly—I have not yet encountered that fact, however.

Senator **Metzenbaum**. Mr. Trott, how many large banks in this country, approximately, have been involved in admitted money laundering?

Mr. **Trott**. Senator, that really cannot be answered because your question, with all due respect, is too broad. If you include——

Senator **Metzenbaum**. Put it in your terms.

Mr. **Trott**. If you include money laundering in the failure to file currency transaction reports——

Senator **Metzenbaum**. OK.

Mr. **Trott** [continuing]. Which I really do not see as money laundering per se, without something else, the figures are rather large and Treasury has those and I think they have already been provided to the committee.

Senator **Metzenbaum**. You say there is a tremendous number of banks that have failed to file the reports that are required by law.

Mr. **Trott**. Yes, as I indicated earlier, I am advised that compliance since our enforcement program has been up 400 percent. It turns out that many banks were not filing these reports, many others claimed that they were not aware of them, and it is clear that there was an administrative failure.

By the way, Mr. Saphos has passed me a note in connection with Senator Biden's question. The Sunshine State Bank in Florida was charged as a Rico enterprise that was laundering, that was deliberately laundering drug money. The chairman and president are charged as Rico conspirators and the doper owner of the bank has already pleaded guilty.

Senator **Biden**. And when did that occur?

Mr. **Trott**. It is a current case.

Senator **Biden**. It is a current case. OK. Thank you.

Mr. **Trott**. The trial is next month.

Senator **Biden**. All right. I will not take much longer. May I have a couple more questions, Mr. Chairman, and then as far as I am concerned we can let the witnesses go.

As I understood you, Mr. Weld, you are slightly more enamored with the use of civil Rico than Mr. Trott is. Is that a fair assessment?

Mr. **Weld**. Yes, Senator, and unauthorized to speak for the Department.

Senator **Biden**. Now, Mr. Trott, the ninth and first and fourth circuits—and you made reference to this indirectly—51 recently passed on the scope with a reporting act as defined by regulations in *United States* v. *Varbel*—is that the correct case?

Mr. **Trott**. V-a-r-b-e-l.

Senator **Biden**. V-a-r-b-e-l, I think it is pronounced Varbel, I assume—and *United States* v. *Anguilo*.

Mr. **Trott**. That was Mr. Weld's case.

Senator **Biden**. Pardon me?

Mr. **Trott**. That was Mr. Weld's case.

Senator **Biden**. Both courts acknowledge that the Treasury Secretary is authorized under the reporting act to require reporting by the financial institution and "by any other participant in the transaction." But "for reasons known only to the Treasury Department, the regulation enacted by the Secretary, 31 CFR 103.22, limited the reporting requirement to the financial institution only." Now, is the Justice Department working with the Treasury Department on new regulations—not legislation, regulations—to close that loophole?

Mr. **Trott**. Yes, we have had a number of meetings with Treasury on regs. It is not as easy as it sounds, but neither should it be as complicated as some people think it is. There is a concern whenever you put in regulations like this that you not overburden private industry with a series of regulations that is overkill. We are trying to look for that medium that gives us the ability to ferret out money movers that still does not drive the financial institutions crazy in terms of trying to comply with it.

I think Mr. Weld has something to add to that.

Mr. Weld. I was just going to say, Senator—and this is really in response to a question you had earlier as well—you say is this not really like the Rico situation where the administration comes back and does not really need a new statute.

I think that this may be somewhat different in that we are talking about an entirely different type of statute. You have got two ways to exploit the vulnerability that criminals have that have to get rid of cash. One is the disclosure requirement, such as we have now in the Bank Secrecy Act, the reporting requirements, and the other is a substantive prohibition.

We have had a lot of luck with increasing compliance in the last year or so. Let us assume even that compliance went—increased—not fourfold but twentyfold and became perfect. Let us assume that Mr. Queen was successful in his effort to narrow that 7-month gap down to 30 days, so that the dope dealers out there would know that if they came into a bank and deposited a million dollars cash in their own name, that that report was going to be on file within 30 days, that it was going to be transferred from Detroit to every district office in the country, that it was going to be analyzed by all the green eyeshade men, and so really that information would flow perfectly to the U.S. attorneys. That still would not get you home.

I would still say you need the substantive prohibition, and the reason is that once the dope traffickers become convinced that that information flow is perfect out there and that the prosecutors and the police and the FBI are going to have it, they would devise alternate means to get around that statute. They would have shell corporations, they would have smurfs, they would have multiple transactions, they would jimmy things around so that you would have the piece of paper and it would be useless, and no Treasury regulation, no reporting requirements can get you around all of that evasive action. For that you would need the substantive prohibition embodied by a ban on money laundering per se.

Mr. Trott. If I may attempt to draw an imperfect analogy, tinkering with the regulations is like raising the hurdles in a hurdle race that the money launderers are in. You can keep raising those hurdles and they keep figuring out ways to get either over them or around them. We want to outlaw the race, and that is what the money laundering legislation will do.

Senator Biden. You know, our laws are basically like hurdles. We can outlaw a lot of things, but I will not engage in attempting to make any other analogy. One last question I have relates to the *Provident* case. On February 28, 1986, the Provident Institution for Savings pled guilty to charges of failing to report 49 large cash transactions totaling $956,000 between 1981 and 1984. Twenty-two of the fourty-nine transactions involved deposits made by the Anzalone crime family at the bank's branch in the Italian section of Boston, and the rest involved deposits made by members of the business community in Boston's Chinatown. The bank agreed to pay a fine of $100,000, rather than face prosecution and possible fines of $500,000. Also one bank employee, a 53-year-old female branch manager from the Italian section branch pled guilty to failing to report 6 of the 49 transactions, and was fined $1,000.

Last Thursday, March 20, an indictment was also returned against the bank's former Chinatown branch manager for 22 of the 49 transactions. That employee is contesting the charges, so his case is presently pending. I have several questions relating to that.

Both the individuals who have been publicly charged have been bank managers. Is there not an officer of the bank who oversees the work of the bank managers in connection with the reporting requirements who would have been in the position to detect problems here and, if that is true, has the bank—not the Justice Department—has the bank taken any action against that employee?

Mr. WELD. I think the president or the CEO of the bank is here, Senator, so I would defer that question to the bank witness.

Senator BIDEN. I am sorry, I was——

Mr. WELD. I think the chief officer of the bank is here and I——

Senator BIDEN. I understand that. I am going to ask him the same question, but I am curious as to whether or not he can know that that is going to be said or asked of him. I am just wondering what you all know, that is all I am asking.

Mr. WELD. I am not sure what the bank has done as an internal matter. I can tell the Senator that the grand jury investigation did not disclose sufficient evidence of willfulness, et cetera, et cetera, so that we thought it would have been appropriate to charge a senior officer who would have received reports from both those branches, if that is the intention of the question.

Mr. TROTT. May I add, too, since that——

Senator BIDEN. Sure.

Mr. TROTT. I just want to tell you, for what it is worth, that our policy is to pursue these cases to all levels. We do not have any policies, nor do we have any interest in laying off as we go higher in any organization, contrary to Senator Metzenbaum's concerns. But there is a requirement that we find evidence and there seems to be an appetite on the part of some people——and I do not mean you—for us to bring charges against people high up in corporations. We do not bring charges, as you well know, against people simply because they get a large salary or they belong to a country club or they have a title. It requires evidence, and I can assure you that where there is evidence there will be charges brought. Frankly, the higher that it goes in an organization, as far as I am concerned, the greater the sentence ought to be, and that is the approach we take.

Senator BIDEN. Let me let you all go with this, and you can comment, you can make any response to what I am about to say. I agree with you, there is a tendency to make the case that all you have to do is put one person away and solve the problem.

By the way, several of the studies I have read on white-collar crime done by the academicians indicate that in fact folks who once nailed, if they are high up, because they are high up tend to get higher sentences than people who are not high up. But without getting into that argument, the real dilemma I have—and I have not reached a conclusion on it—with the Justice Department on this matter, and I might add on others, but on the matter of money laundering, is not so much whether there is a deliberate policy at the Justice Department saying, by the way, you know, do not go after major figures in the banking community because they are Republicans and because they are contributors or because of any of that kind of thing, or because they are whatever, because they are wealthy.

There seems to be an overly sensitive, from my perspective, not anyone else's, overly sensitive to impacting upon doing business, conducting commerce, at the expense of being tenacious about pursuing these cases, as opposed to what probably would be the case of Senator Metzenbaum were he the Attorney General.

You could argue that maybe Senator Metzenbaum would not take into consideration commerce and the cost of doing business when he was weighing wherein to weigh in. My disagreement with Justice in this matter relates to intensity and degree, and I would argue from my perspective—I am not asking you to agree, just you understand as we go on for the next 2½ years or 2 years, where you are going to have problems with me to the extent that you are going to have any in this area, and that is you seem to be overly sensitive, you in a generic sense, you the administration, overly sensitive to impacting upon the conduct and the ease with which business can be conducted at the expense of being tougher on criminals.

Mr. **Trott**. It seems you may be mixing two categories. Are you talking first of all of our determination as to what the regulations ought to be, or with the intensity with which we pursue cases?

Senator **Biden**. Both. The first category is with what the regulations should be. Obviously, it is not very hard, if you are not—let us take the extreme. Let us put my position in as worst light. If you are not at all concerned about the trouble you impose upon a bank and the impact that has on commerce in this country, you could obviously by regulation close the loophole referred to by the fifth circuit. Right? I mean if you did not have any concern, you could go in and close it up.

Mr. **Trott**. Sure, we could put IRS people in all banks as sort of roadblocks and examine every customer that came in, frisk them, shake them down and ask them where their deposit came from.

Senator **Biden**. OK. Agree. So I am prepared for you to understand and put myself in the worst light from my position. Now let me put it the other way, how you all appear.

You all appear not only not to put anybody in the bank to do those terrible things which would be in the worst scenario that could be done regulatorily, you all appear for guys like me to be saying, "Whoa, let's just stand back, let's just stand back, unless it jumps out and hits us in the head with a baseball bat right between the eyes, let's not fool around with it," not because you want to let anybody go but because in fact you do not want to impede upon commerce, and that is just a philosophic difference.

Mr. **Trott**. Now, Senator, we do not have a lot of time to debate this, but I could tell you——

Senator **Biden**. We have all the time I want to give you and the Chairman give you——

Mr. **Trott**. All right.

Senator **Biden** [continuing]. And you can take your time.

Mr. TROTT. All right. I think frankly that your perspective is not based on a significant view of what we have been doing and I think if you would ask the banking community, for example, and the banks that I referred to earlier——

Senator BIDEN. Of course, if you ask the banking community, they have already told me that you are doing awful things to them. If I asked the Cosa Nostra, they would tell me you are doing awful things to them. If I ask labor unions, they would tell me you are doing awful things to them. It is ridiculous to ask the banks whether or not they think you are doing your job.

Mr. TROTT. I am just asking you to ask people what has been done. If you examine, for example, the *Bank of Nova Scotia* case down in Florida, you will see——

Senator BIDEN. Let us stick to one thing.

Mr. TROTT. All right, may I tell you what was done in that case first of all?

Senator BIDEN. No, because you are going to be anecdotal when—you are anecdotal when it is convenient to be anecdotal and you refuse to be anecdotal when it is not convenient for you to be anecdotal, and I am getting tired of playing that game.

What I am trying to say to you is I am trying to be fair. I want you to understand what your problem is with guys like me. Your problem with guys like me is it takes months to close a loophole, and the reason it takes months to close a loophole is because you are fearful of treading on the toes of commerce, not individuals. I am not accusing you of trying to protect the big guy. I am accusing you of thinking like very conservative businessmen. That is what I am accusing you of, that is all, and I just want you to understand the philosophic difference. That is the only point I am trying to make with you.

Mr. TROTT. I appreciate your perspective in that respect. I plead not guilty. We are not——

Senator BIDEN. Well——

Mr. TROTT. We are simply—I guess you may say, well, now you are responding with semantics, but we are trying to do what I think all prosecutors are supposed to do in this area and what all legislators do when you hold hearings on these subjects, and that is carefully consider the ramifications of what you are doing.

Once that is done, then I would agree with you, you have taken an aggressive position that takes as much as you can out of the problem and go with that.

Senator BIDEN. We will have a chance to come back to this a lot, I am afraid. Thank you.

Mr. TROTT. Thank you, Mr. Chairman.

The CHAIRMAN. All right. Mr. Weld, you have already been asked questions, and we put your statement in the record in Tuesdays hearing.

Mr. WELD. Thank you, Mr. Chairman.

[Responses to questions follow:]

U.S. Department of Justice

United States Attorney
District of Massachusetts

1107 J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

May 21, 1986

Honorable Strom Thurmond
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: Senate Judiciary Committee Hearing on
Money Laundering, March 25, 1986

Dear Mr. Chairman:

Attached are my written answers to the questions propounded by members of the Senate Judiciary Committee at its hearing on money laundering on March 25, 1986.

I very much appreciated the privilege of appearing before the Committee, and the courtesies extended to us by Dennis Shedd and other staff members.

Sincerely,

WILLIAM F. WELD
United States Attorney

Attachment

WFW:efb

ANSWERS TO QUESTIONS PROPOUNDED BY MEMBERS OF SENATE JUDICIARY COMMITTEE FOR U. S. ATTORNEY WILLIAM WELD (HEARING OF MARCH 25, 1986)

Questions from Chairman Thurmond

1. In light of recent prosecutions in which your office has been involved, where does the problem of failure to report violations of the Bank Secrecy Act lie, with the financial institutions or individuals trying to avoid compliance? What corrective measures do you propose?

Response to Question 1.

The duty to report cash transactions is imposed by the Bank Secrecy Act directly on bankers, so in that sense the problem of violations of the Act by definition involves bankers. The ultimate purpose of the Act, however, is not to punish bankers but to generate information which will be useful for law enforcement in investigating and prosecuting narcotics, white collar, corruption, and tax offenses. Accordingly, the real loss that law enforcement suffers when banks fail to make the required reports is the loss of information which could have been used against those other criminals.

While there have been a few spectacular cases involving actually corrupt bankers, it is my belief that in most instances where the letter or spirit of the Bank Secrecy Act and its reporting obligation are violated, the initiative is taken by individuals trying to avoid compliance. As a corrective measure, the enactment of a substantive prohibition on money laundering, or knowingly trafficking in the proceeds of illegal activity, would reach not only the bankers but also the individuals trying to avoid compliance with the Act.

2. What innovative techniques have you encountered by money launderers attempting to avoid detection, and what have prosecutors been able to do to identify and prosecute these individuals?

Response to Question 2.

We have found that individuals who have engaged in illegal activity and are trying to launder the proceeds of that activity use shell corporations, multiple accounts, straws, couriers, real estate trusts, clients' funds accounts or escrow accounts with lawyers or law firms, and division of large amounts of cash into amounts just under $10,000, in order to avoid detection. Under recent case law in the First Circuit and the Ninth Circuit, prosecutors are relatively helpless if criminals wishing to launder large amounts of cash simply split it up into individual amounts under $10,000 and launder it a little bit at a time. On the other hand, it is generally possible to penetrate shell corporations, real estate trusts, and straws through a grand jury investigation. Also, there have been some successful prosecutions of couriers for drug traffickers on a conspiracy theory, although the future viability of such prosecutions may be somewhat undermined by the recent case law in the First and Ninth Circuits.

Question from Senator Specter:

1. You have stated that criminal prosecutions of banks are a way to impress on bankers their legal obligation to report large cash transactions. Yet you have also noted the problems with bankers' fears that the filing of currency reports would lead to retribution by suspected criminal customers. How do you propose to solve this dilemma?

Response to Question from Senator Specter

Given the enormous societal interest in investigating and prosecuting crimes which involve large amounts of cash, I personally do not think there is a legitimate privacy interest in keeping large cash transactions secret; or at least, to the extent that there is a legitimate expectation of privacy in large cash transactions, I believe it is outweighed by the societal interest in having information about such transactions available to law enforcement. Therefore, I would solve the dilemma by coming down in favor of the bankers' legal obligation to report large transactions. If the filing of currency reports by bankers, as required by law, leads to retribution by criminal customers, I would favor vigorously prosecuting the customers for that retribution, rather than shying away from enforcing the reporting duty of bankers in the first place. Whenever citizens are called on by the law to testify or give evidence against criminals, there is at least a theoretical danger of retribution, but that is hardly a persuasive reason to forego requiring the testimony or evidence.

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 1 1986

The Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During the March 25th hearing before the Senate Judiciary Committee, I was asked to submit written responses to several follow-up questions for inclusion in the record of that hearing. Enclosed are the answers to questions propounded by Senators Spector and Grassley.

Again, thank you for affording me the opportunity to testify before the Committee.

Sincerely,

Stephen S. Trott
Assistant Attorney General
Criminal Division

Enclosures

Senator Specter has asked the following question:

1. The American Bar Association has stated in testimony previously before this Committee on this issue that the major problem with money laundering is its detection, and not the prosecution of the offenses, once discovered. Do you disagree with this position? If so, is it your position that bills which create new offenses do need to be enacted, and that efforts to enforce the existing statutes would prove to be fruitless?

Difficulty in detection is of course a significant barrier to enforcement. Large-scale money laundering operations, significant drug rings and organized crime groups are all able to function because they are extremely skillful at hiding their activities. Thus, the first step and a key step in the prosecution of these criminals is to detect them.

Indeed, an increased ability to find money launderers is one of the goals of the legislative proposals being considered by this committee and of alterations in administrative regulations which are presently being studied. One example of a statutory charge which could be significant in improved detection is clarifying language in the Financial Privacy Act.

A financial institution which suspects from the nature of a customer's transactions that he or she may be involved in criminal activity may be anxious to report its observations to law enforcement agencies. The broad language of the Financial Privacy Act arguably already allows institutions to share their suspicions with law enforcement agencies and to provide access to customer's records. However, there are significant civil penalties in the Financial Privacy Act which realistically can deter institutions from voluntary cooperation. The absence of this information has significantly hindered early detection of money laundering, the arrest of violators and the seizure of their assets.

The proposed legislation would insure that the Financial Privacy Act protects an institution which makes early disclosures about suspicious activity. If these alterations in the statute were enacted, institutions could be secure in fulfilling their obligation to aid in the discovery of criminal activity.

However, simply because detection is a major problem in stopping money laundering does not mean, as the comments of the American Bar Association seem to imply, that there are not significant barriers to prosecution once money launderers are discovered. In fact, the American Bar Association has endorsed the concept of making money laundering a specific offense. These problems stem in significant part from a series of judicial decisions, the so-called Anzalone line of authority, which has significantly narrowed both the offenders who can be prosecuted under the present statutory scheme and the theories of liability which are available to a prosecutor (a summary of these decisions is attached at appendix one).

The effect of these cases is that even after money launderers are detected many of the participants in the scheme, if they utilize a little ingenuity in structuring their efforts, cannot be prosecuted. Therefore, even vigorous enforcement of the law as it presently stands is inadequate because many of the members of a money laundering organization can insulate themselves from liability.

In my letter to you of May 12, 1986, I described several important improvements that would be made by passage of the proposed legislation. I believe a brief restatement of these changes will illustrate problems in prosecutions that stem not from difficulties in detection, but in the legal tools presently available.

1. In order to convict an individual or a financial institution of a Title 31 offense, the United States must now prove actual knowledge of the reporting requirements and actual knowledge that the reporting requirements governed the individual transaction(s) at issue. Actual knowledge is an onerous standard of proof, especially as applied to financial institutions. In fact, many cases which intuitively would appear to be "criminal" must be handled civilly because of proof problems.

Under the proposed legislation, the government has the alternative prosecution standard of reckless disregard of the fact that monetary instruments or funds represent the proceeds of, or are derived from, unlawful activity. This alternative standard of proof would greatly increase the chances of convicting both financial institutions and individual money launderers.

2. Under the Bank Secrecy Act, institutional or individual money launderers are most frequently prosecuted under 18 U.S.C. 1001 (Scheme to Defraud) and/or 18 U.S.C. 371 (Conspiracy). The operative prosecution theory is that the money launderers schemed or conspired to cause a financial institution to fail to file a Currency Transaction Report (CTR). Thus, the depository acts of the money launderers are not per se prohibited, rather, instead, what renders the conduct illegal is the plan employed to hide the fact of the transaction in currency (i.e. its source, origin, and existence) from the Department of Treasury. This prosecution theory, while quite viable, is a roundabout way of attacking the problem of money laundering. Often, prosecutors are needlessly forced to immunize a witness, offer very favorable plea bargains to co-conspirators, or treat the financial institution civilly in order to break the conspiracy of silence which permeates money laundering circles. This regretable choice would be significantly diminished with passage of the proposed legislation.

The suggested statute would directly prohibit an individual or institution from conducting a transaction involving the movements of money generated by or derived from the commission of any crime. Further, whereas the Bank Secrecy Act only deals with cash transactions, the proposed legislation would reach wire or other electronic transfers; transfers which are frequently conducted by financial institutions willing to turn a blind eye to the criminal origin of the money to be transferred.

3. Under 31 U.S.C. §5322 an individual who is convicted of a felony may be sentenced up to five years and/or fined $500,000, or both. Under current parole guidelines, if a money launderer is convicted of laundering less than $500,000 but greater than $100,000, his parole eligibility range, absent extenuating circumstances, will be 24 to 36 months. If a money launderer is convicted of laundering more than $500,000, his parole eligibility range, absent extenuating circumstances, will be 40 to 52 months. Thus, money laundering prosecutors can realistically expect to incarcerate money launderers who have handled millions of dollars in narcotics money for a maximum of fifty-two months regardless of the sentence actually imposed. These guidelines reflect the perception that Title 31 offenses are essentially banking regulatory crimes.

Under the proposed legislation, the maximum sentence for the crime of "money laundering" will be twenty years and/or $250,000 or double the value of the funds laundered, whichever is greater, or both. Thus, with the separate designation of a crime entitled money laundering, which has penalties attached which are substantially equivalent to narcotics statutes, it is expected that money launderers will be incarcerated for a period of time commensurate with the offense committed.

4. The proposed legislation also provides for forfeiture of laundering proceeds. Under existing law no forfeiture provision exists. As a consequence, a prospective money launderer, individual or institution, can anticipate modest jail time in a Federal Correctional Institution after which the proceeds of his criminal venture will be his to use. This reality has encouraged an almost cavalier attitude among money launderers. If detection is so difficult and prosecutions result in minimal or no jail time, why sacrifice the profits which can realistically be anticipated from a successful criminal enterprise. The forfeiture provision, as it dovetails with the enhanced penalties, should provide an answer to this question.

I certainly do not believe that efforts to enforce the existing statutes are fruitless. Indeed, there are ongoing prosecutions across the country. However, the effectiveness of enforcement is severely hampered by the difficulties I have outlined. The proposed legislative change would greatly improve the ability of prosecutors to prevent criminals from enjoying the profits from their illegal activity.

Senator Grassley has asked the following questions:

1. A major problem for law enforcement in the area of money laundering seems to be the inability to gain access to foreign bank account records. I know you've had some success in this area with the Cayman Islands, and that regulations have been in effect requiring the reporting of transactions with financial institutions in certain foreign locations. What effect have these regulations had on the problem and what else is being done specifically, or what can be done to plug this major loophole?

Treasury Department Regulations

Recent regulations issued by the Treasury Department, termed targeting regulations by the Treasury, appear at 50 Fed. Reg. 27821 (7/8/85) and amend the Currency and Foreign Transactions Reporting Act regulations (31 CFR Part 103) by establishing a procedure by which the Secretary of the Treasury can require financial institutions to report information concerning transactions with foreign financial institutions. The regulations provide no additional reporting requirements themselves; their function is merely to enable such reporting requirements to be instituted. No such requirements have yet been put into effect. Moreover, the regulations explicitly provide that they are not to be used against a specific target of an investigation, and their use is contemplated more as a tool for the receipt of "pattern" information.

There are several other measures being taken which can plug the loophole offshore secrecy jurisdictions pose.

Subpoenas

The foreign banks most used by drug traffickers to hide or launder the proceeds of their crimes often have branches in the United States. Federal prosecutors can sometimes issue subpoenas to the US branches of these institutions commanding the production of the records abroad. Often, the bank or institution resists the subpoena on the ground that production of the records would violate the bank or business secrecy laws of the foreign jurisdiction where the records are stored. Our courts have repeatedly upheld the use of these subpoenas, and ordered the banks to produce the records, thereby enabling our investigations to trace the illegal funds.

For example, in what is known as the Bank of Nova Scotia I case, 1/ a grand jury investigation tax and narcotics charges involving one Robert Twist issued subpoenas commanding the bank to produce records from its branches in the Bahamas and Antigua. The Bank initially refused to produce the records, and the court upheld the imposition of substantial sanctions against the bank until the records were produced. The documents thus obtained were used in the subsequent trial of Twist, who was convicted and sentenced to a substantial prison term on major narcotics charges. In Bank of Nova Scotia II, 2/ a similar grand jury investigation of Frank Brady resulted in similar subpoenas calling for records from the bank's Cayman Islands and Bahamas branches, and the bank's inordinate delay in complying was held to justify sanctions which totalled $1,825.000.

One major problem with subpoenas of this kind is that they are useless against the rather large number of foreign banks (such as First Cayman Bank, or the now-defunct Castle Bank of the Bahamas) which have no branches in the U.S. The most serious problem, however, has been that using and enforcing subpoenas of this kind led directly to bitter diplomatic protest by "bank secrecy" jurisdictions. These countries evidently fear that the routine use of such subpoenas would seriously undermine their treasured bank secrecy laws, and adversely affect their economy. The use of Bank of Nova Scotia subpoenas has also been attacked by countries like Canada and Japan, who view it as an improper exercise of extraterritorial U.S. jurisdiction. While we do not agree that either of these complaints is justified the international tension generated by these protests tended to adversely affect diplomatic relations and jeopardize cooperation in other areas.

Court Ordered Waivers

In many offshore bank secrecy jurisdictions, the customer can waive the protection of the bank or business secrecy laws if he wishes. Therefore, one enforcement technique we have successfully used to close the foreign bank secrecy loophole involves asking a U.S. court to order the suspect to sign a document waiving any foreign secrecy protection. This document is then presented to the bank, which then produces the desired records of the law enforcement authorities. Our courts have approved the use of this process on several recent occasions. United States v. Davis, 767 F.2d 1025 (2d Cir. 1985); United States v. Ghidoni, 732 F.2d. 814 (11th Cir. 1984), and it has resulted in the production of valuable evidence without the international conflict Bank of Nova Scotia subpoenas sometimes entailed. However, this technique is less useful where the suspect has been clever enough to maintain his foreign account in a name other than his own, (such as a "front" company incorporated abroad). It has also drawn criticism from foreign officials in jurisdictions like the Cayman Islands, where the courts do not recognize such waivers as valid.

1/ In Re Grand Jury Proceedings: United States v. Bank of Nova Scotia, 691 F.2d 1384 (11th Cir. 1982), cert. denied. 462 US 1119 (1983).

2/ In Re Grand Jury proceedings: United States v. Bank of Nova Scotia, 722 F.2d 657 (11th Cir. 1983) and 740 F.2d 817 (11th Cir. 1984) cert. denied. 105 S.Ct. 3086.

Executive Agreements

While we reject the claim that subpoena enforcement or court ordered waivers violate international law, the diplomatic concern over the use of these unilateral methods of investigation has been one factor leading to negotiation of international agreements guaranteeing us access to foreign bank records.

For example, in June 1984 the United States entered into an executive agreement with the United Kingdom on behalf of the Cayman Islands. This agreement requires that when the United States Attorney General certifies that an investigation "arises from, connected with, relating to, or resulting from" illegal drug trafficking, he can require the Cayman authorities to lift bank secrecy and produce authenticated copies of records of bank, business, or legal transactions, or other evidence in the Caymans concerning the case. The agreement requires that the Cayman Islands' Attorney General obtain the records within fourteen days of receipt of the certificate, and transmit it to us without delay. The Justice Department has made over 65 successful requests under this agreement, and the documents produced have contributed to more than 60 indictments and convictions, and to the recovery of well over $12 million in seized and forfeited assets. Similar agreements with other British colonies and territories in the area are expected soon, and could well yield even greater benefits.

These agreements are of limited value unless the participating parties enact the necessary legislation to implement them. The Caymans was willing in the case of its agreement but knew we could not reciprocate. For the United States to be able to reciprocate and provide most of the assistance that might be requested, we need to negotiate a formal treaty that takes precedence over United States domestic law.

Mutual Legal Assistance Treaties

For the short term, agreements like the Cayman agreement are extremely helpful, but our goal in this area is to negotiate a network of formal treaties to facilitate the exchange of information and evidence in criminal investigations and proceedings related to narcotics and other offenses. These mutual legal assistance treaties (MLATs) provide a comprehensive framework for dealing with international evidence-gathering problems, and offer the best hope of regular access to the records which are needed in order to successfully prosecute major narcotics cases.

There are currently MLATs in force with four countries: Switzerland, the Netherlands, Turkey and Italy. We have signed and secured Senate advice and consent to MLATs with two more countries (Morocco and Colombia), and have signed two other MLATs (with Thailand and Canada) which have not yet been submitted to the Senate. We have concluded negotiations with the Cayman Islands and the Bahamas on the texts of MLATs which we hope will be signed soon, and there are negotiations under way with Jamaica, and several other countries involved in narcotics traffic or the laundering of drugs proceeds.

2. At last week's hearing, I made reference to a proposal to money laundering legislation by Mr. Hodges of the American Bankers Association that would attempt to create an incentive to disclose information by financial institutions by not imposing a penalty on the institution if it promptly discloses possible violations to authorities.

   Could you comment on Mr. Hodges' suggestion?

This question relates to a legislative proposal contained in the prepared statement of Mr. Robert H. Hodges, Jr., on behalf of the American Bankers Association, which Mr. Hodges presented before the Senate Committee on the Judiciary on March 18, 1986. The proposal would add the following "incentive" language to the Bank Secrecy Act:

> No liability for a civil penalty shall be imposed upon a financial institution for a violation of this subchapter or a regulation prescribed under this subchapter if such violation is first discovered by such financial institution and is promptly disclosed by such financial institution to the Secretary or in accordance with regulations prescribed by the Secretary.

This amendment proposed by the banking community would give banks a "free pass" for past currency reporting violations if they promptly disclosed such violations to authorities. Although, on its face, this proposal appears reasonable, it does not stand up under close examination.

First, as with any plea offer, we must ascertain how this so-called "incentive" would be of mutual benefit to the government. In essence, the bankers are clearly proposing a *quid pro quo* with regard to information of possible violations for forgiveness of such past transgressions. If this proposal would encourage full compliance with existing reporting laws, this, in itself, might be sufficient reason to justify its acceptance. However, if, as we expect would be the case if this proposal were enacted, a bank would come forward with such disclosures only after federal investigators were close to discovering the bank's non-compliance with the reporting laws, then the failure to impose a penalty on the bank would not appear to encourage future compliance with the law, but, instead, would only appear to encourage the bank to disclose existent violations when federal investigators were about to make the discovery themselves. Inherent in this discussion, therefore, is the important distinction between the bank discovering violations on its own without any outside encouragement (other than the provisions of the Bank Secrecy Act which provide penalties for non-compliance) and a bank which audits its compliance with the law only after the bank as a whole, or certain of its branches, have been targeted for examination by federal authorities.

Second, and very important to the value which the government could derive from this scheme: at what point would a disclosure no longer be "prompt" with regard to this proposal? It must be remembered that one of the major goals of the currency reporting requirements of the Bank Secrecy Act is the tracking of currency such that investigators can trace funds believed to be from an illicit source and follow them to their ultimate recipient. The government only benefits from the information on these forms if it is provided promptly, and not at a time many months subsequent to the activity and only after a bank discovers its mistake and attempts to rectify it in order to avoid incurring a penalty. This injury to the government's investigative efforts would not be salved by late notification, even if the bank's disclosure occured prior to the time that the government would otherwise have discovered the violations.

Third, this proposal effectively creates a statutory "blanket immunity," which could be compared to giving defense contractors a promise that they will not be prosecuted for procurement fraud committed on their behalf by their top employees if the contractors come forward and confess this past conduct. As in the banking context, this promise would not provide defense contractors with any incentive to prevent their employees from engaging in illegal activity, only a great incentive to confess at a time when the government is near to discovering the activity on its own. And, likewise, because of the timing of the admissions, the government would not be in a position to detect the criminal activities of other persons who may have aided, or otherwise facilitated, the fraudulent activity of the corporate employees. Obviously, we would not give across-the-board immunity to all defense contractors who admitted the past criminal conduct of its employees, although immunity may be granted in limited circumstances (and not wholesale by statute) because of factors which would justify this action. Otherwise, society would not benefit from this generosity on the part of the government because the "incentive" could not be expected to reduce the amount of procurement fraud committed by employees on behalf of their defense-contractor employers.

Also, it must be remembered that if a bank were to report its currency reporting violations prior to the time that the various federal agencies focused their attention on it (and not just at a time subsequent to the investigation but prior to imposition of a civil fine or institution of criminal prosecution), then the bank's cooperation would properly serve as a mitigating factor in considering the appropriate penalty, if any, to be imposed on the bank, and might possibly change what could have been a criminal prosecution into a civil fine by effectively negating the intent requirement. But, again, this would be on a case-by-case basis, and such a determination would be made only after a consideration of a number of factors, including the bank's possible culpability in the violations, other actions of the bank in ensuring compliance with the reporting law, etc.

Based upon the foregoing, the proposal appears neither to provide a sufficient "incentive" to minimize future violations, nor is it sufficiently beneficial to the government in any other way to warrant incorporation into our investigative/prosecutive procedures with regard to financial cases.

While we would like to work with the banking community to encourage prompt reporting of both past and present currency reporting violations, and while we commend the American Bankers Association for thinking along these cooperative lines, this proposal, which in essence immunizes bankers, is not an acceptable means to accomplish this goal.

3. In regard to the forfeiting of assets seized, especially in drug-related crimes, has the problem of proving title in the property ever presented itself?

   A. If so, has it been an obstacle for the government in eventually disposing of the property?

We are unaware of any obstacles that the government has encountered relating to proving title when the government has disposed of personal property forfeited to the United States. However, the strength of the government's title to real property which was civilly forfeited to the United States has frequently been a major concern when the United States Marshals Service has attempted to dispose of such property. The Marshals Service has found that title insurance companies are reluctant to issue title insurance to potential purchasers of realty that has been civilly forfeited to the United States. The inability to obtain title insurance prohibits a purchaser from financing the purchase and, thereby, directly affects the value of the forfeited property.

To our knowledge, this problem has not arisen in conjunction with the sale of real property that has been criminally forfeited in an in personam action. (This is discussed in subsection B.)

Because civil forfeitures are in rem prosecutions against the property, based upon the legal fiction that the property itself committed the wrong, no in personam defendant need be prosecuted as a prerequisite to civil forfeiture. Consequently, the United States can forfeit the property of a fugitive or of a person who, for one reason or another, has not been (and may never be) criminally prosecuted.

Because of the perceived draconian nature of forfeiture, and the abhorrence expressed by title insurance companies toward the government's forfeiture of property without the owner having the benefit of criminal prosecution, title insurance companies have frequently refused to insure the title to property which has been civilly forfeited to the United States unless the United States agrees to idemnify the company for any costs it may incur pertaining to the government's title.

In addition, title insurance companies have refused to issue title insurance where the owner of record has not been personally notified of the action or has not intervened in the civil forfeiture case. In such instances, the government may obtain a default judgment of forfeiture from the appropriate district court upon a showing that the government has complied with all procedural steps to forfeiture: specifically, that notice of the government's intent to forfeit was published in a newspaper of general circulation and that service was made or was attempted on all known persons with a possessory or ownership interest in the subject property. Although such documentation is sufficient for the judiciary, title insurance companies apparently believe that there are some weaknesses in these procedures.

B. If so, how can the obstacle be removed?

Title insurance companies appear to perceive title to criminally forfeited property to be above reproach. This is due, in part, to the fact that the requisite _in personam_ action of criminal proceedings provides the "owner" with an opportunity to appear before the court and to present evidence as to why he or she believes forfeiture should not be ordered. In addition, the criminal forfeiture statutes which are applicable in these situations specifically provide a post-forfeiture forum wherein all persons that may have an interest in the subject property may raise their claim and have it adjudicated prior to the final order of forfeiture. Upon completion of this third-party proceeding, the law allows the United States to "warrant good title to any subsequent purchaser or transferee." _See_ 18 U.S.C. § 1963(m)(7); 21 U.S.C. § 853(n)(7).

Although the steps required by the third-party proceeding are patterned after civil forfeiture procedures (_viz._, publication, notification, and hearing), the civil forfeiture statutes do not state that the United States can warrant good title. Such an amendment, particularly to the most frequently used civil forfeiture statute (_i.e._, 21 U.S.C. § 881) would likely give the title insurance companies the assurance they need to issue insurance on property which has been civilly forfeited to the United States. We will continue to educate the title insurance companies in the area of forfeiture law and procedure.

Regarding _United States v. Katz_, that case involved a criminal forfeiture. We believe that the previously described concept of a third-party proceeding should resolve any difficulties of the type reportedly encountered in that case.

APPENDIX ONE

United States v. Mouzin, No. 83-5145 (9th Cir. March 18, 1986)
United States v. Carvajal, No. 83-5168 (9th Cir. March 18, 1986)

In September 1981 defendant Mouzin approached the president of a small Manhattan Beach bank and asked whether he would accept cash deposits in excess of $10,000 without filing CTR's. The president contacted the IRS and agreed to cooperate in an investigation of Mouzin. He then agreed to accept the deposits. By January 1982 Mouzin became concerned that the large deposits might attract attention in so small a bank. She was then introduced to an undercover agent who, claiming he had connections with a larger bank through which he laundered money, agreed to accept cash from Mouzin through the front "Pan Pacific Financial Management", for deposit in Security Pacific National Bank. Mouzin gave the agent millions of dollars in cash from February 1982 until June 1982. Pursuant to her direction, sums were disbursed from the account by wire to other banks in Miami and Panama. In addition, Mouzin introduced agents to codefendant Carvajal, for the purpose of their conducting cocaine transactions.

Mouzin was convicted of nineteen separate offenses including five counts of failure to report currency transactions in excess of $10,000. She challenged the convictions under 31 U.S.C. 1059 (now 31 U.S.C. 5313, 5322) on the grounds that she was not a financial institution and therefore had no reporting obligation, that even if she fell within the regulations' definition of financial institution that this definition exceeded the limits of the statute, that she qualified as an exempt nonbank financial institution, and that the evidence was insufficient for conviction on these counts. Mouzin also challenged the admission of a ledger found at the residence of a coconspirator and admitted under Rule 801(d)(2)(E). Defendant Carvajal was convicted of various substantive narcotics charges.

Held: Mouzin's admitted transfers of currency between Columbia and the United States as well as among the states in an ostensibly legitimate business venture were sufficient to qualify her as a financial institution, and this inclusion was consistant with the legislative intent of the statutory definition. Further, nonbank financial transactions are only exempt if they involve transactions with commercial banks; therefore the exemption was inapplicable to Mouzin's transactions. Upon reviewing the sufficiency of the evidence, however, the court found sufficient evidence only to one count, in which an agent testified to the delivery of the alleged sum by the defendant. The court found that the physical transfer of currency is the operative event giving rise to the reporting obligation, and that the government, to prove a reporting violation, must produce evidence of a physical "transaction in currency." In this case the court found that testimony of agents regarding delivery of sums by another codefendant did not establish the times or terms of a prior reportable receipt of currency by Mouzin, and therefore did not establish a reportable physical receipt of currency.

Convictions on two other counts were reversed because the court ruled that admission of the ledger was without proper foundation as the statement of a coconspirator. The ledger, written in Spanish, did not contain any explicit references to cocaine, and did not mention the name of anyone the government was able to identify at trial. The government was unable to establish its authorship, and handwriting analysis was inconclusive. The government introduced the ledger through an agent, who testified that, in his expert opinion, the ledger was a record of a large international cocaine operation.

Held: Because the government was unable to establish authorship, there was no proof of the declarant's identity. The basic foundational requirement for admission of a coconspirator statement was therefore lacking. The only government evidence linking the ledger to the conspiracy was its location at the coconspirator's residence, and the presence of his fingerprints on it. Because mere possession does not constitute an adoptive admission, this evidence did not establish an adoption of the ledger's contents by the coconspirator.

United States v. Richter, 610 F.Supp. 480 (N.D.Ill. 1985)

The defendants (and several government agents) were involved in a scheme to launder large sums of money by structuring it into smaller deposits and eventually wiring it to Switzerland. Although all the deposits involved amounts less than $10,000, to avoid the reporting requirement, several transactions involved multiple deposits at one bank within a single day. The sum of these deposits exceeded $10,000. The defendants were charged with conspiracy to defraud the United States, in violation of 18 U.S.C. 371; three acts of failing to file CTR's, as de facto financial instituions, in violation of 31 U.S.C. 5313, 5322; causing banks to fail to file CTR's, in violation of 31 U.S.C. 5313, 5322(b) and 18 U.S.C. 2(b); and various acts of wire fraud, in violation of 18 U.S.C. 1343.

Held: An agreement to structure deposits so as to avoid the filing requirements is an indictable offense, even though the defendants were not themselves under a duty to file CTR's. The crime alleged was not the making of the deposits, nor the failure to file, but rather the use of tricks to disguise the transactions as something other than what they in fact were -- deposits of greater than $10,000. In addition, the substantive acts of structuring, each of which involved multiple transactions at a single bank on a single day, the sum of which exceeded $10,000, were held to be indictable offenses, under the combined 18 U.S.C. 2 and 31 U.S.C. 5313. The alleged offense was the act of breaking up the large sums into smaller ones to conceal from the banks the fact that they actually were dealing in sums greater than $10,000. Application of the Bank Secrecy Act was also upheld against charges of vagueness, impossibility and unconstitutionality.

The wire fraud counts were dismissed. No case had been found which imposed liability under an intangible rights theory in a wire fraud prosecution where no fiduciary duty existed, and the court refused to broaden the wire fraud statute to cover this situation. Since it found no evidence that the defendants owed a fiduciary duty to the United States, it dismissed the wire fraud counts.

United States v. Anzalone, 766 F.2d 676 (1st Cir. 1985)

On November 13, 1980 appellant purchased three checks from the Haymarket Cooperative Bank, totalling more than $25,000, but none of which exceeded $10,000 individually. Thereafter, on separate dates between November 18, 1980 and December 1, 1980, appellant purchased nine additional checks totalling $75,000, again none exceeding $10,000 individually. All the checks were payable to the same stock brokerage firm to pay for bonds purchased to the account of the wife and mother of a public official. The bank did not file any currency transaction reports (CTR's) concerning these transactions.

The appellant was convicted of conducting a scheme to conceal a amterial fact from the United States, in violation of 18 U.S.C. 2, 1001 and of causing the bank to fail to file the required reports, in violation of 18 U.S.C. 2 and 31 U.S.C. 5313, 5322. He appealed, arguing that the application of criminal sanctions to his conduct violated the fair warning elements of the due process clause.

Held: The statute and regulations provided no notice to the appellant that structuring a transaction in currency to avoid the need for filing was illegal. The application of criminal sanctions to appellant's conduct was therefore inconsistent with due process.

First, the statute imposed no duty on the appellant to inform the bank of the structured nature of his transactions. Second, there is no indication in the statute or its legislative history that structuring is itself illegal. Moreover since the bank was under no legal duty to report the transactions, appellant could not be liable for causing the bank to violate the law. Finally, the court concluded that structuring transactions to avoid the filing requirement constituted "avoidance", rather than illegal evasion.

United States v. *Gimbel*, No. 85-CR-101 (E.D.Wis. Oct. 11, 1985)

The defendant was charged with one count of concealing material facts from the IRS, in violation of 18 U.S.C. 2, 1001, and with several counts of mail and wire fraud. The first count was based on allegations that the defendant structured currency transactions so as to conceal the fact that he deposited more than $10,000 in currency into one bank account during the course of one day, and the fact that he withdrew more than $10,000 in currency from the same bank account during the course of one day. As a result of the structuring, the bank failed to file CTR's. The indictment also alleged numerous other occasions of structuring and disguising transactions.

The mail and wire fraud counts were based on the defendant's alleged use of the mails and wires in connection with his money laundering scheme.

Held: Structuring a transaction by breaking one large transaction into multiple smaller transactions totalling over $10,000 in a single day at a single bank is prohibited by the Bank Secrecy Act, and constitutes an indictable offense in connection with 18 U.S.C. 2, 1001. The reasoning of the *Richter* court is adopted, and *Anzalone* is distinguished as involving transactions taking place over the course of several days. Prosecution under these statutes does not offend due process.

The court rejected the *Richter* reasoning on the mail and wire fraud counts, finding that the case involved more than intangible rights, because the government was deprived of more than raw information; it was deprived of tax dollars. Therefore a finding of fiduciary duty was not necessary. In addition there were policy reasons for permitting prosecution under these statutes, particularly the historic use of the mail and wire fraud statutes as a "stopgap" took of enforcement for new types of criminal activity.

United States v. *Cogswell*, No. CR-85-646 WHO (N.D.Cal. Nov. 19, 1985)

The defendants were charged with one count of concealing and causing to be concealed material facts, in violation of 31 U.S.C. 5313 and 18 U.S.C. 2, 1001, and one count of conspiracy to conceal material facts and conspiracy to defraud the United States, in violation of 18 U.S.C. 371. The indictment alleged that defendant Schwindt provided Donna Rainwater with approximately &75,335 in U.S. currency, and that within the next two days she purchased, on behalf of the defendants, three cashier's checks for $9000 each, at three different banks in California. These transactions were allegedly part of a scheme to transfer the money without the filing of any CTR's. Defendant Cogswell then allegedly used the checks to purchase a motor home under a false name.

Held: The Reporting Act does not impose a duty to report transactions in amounts under $10,000, and therefore the defendants cannot be prosecuted for concealing material facts, because the defendants had no legal duty to disclose any facts. Following *Anzalone*, the court found that there was no duty to report the structured transactions and that structuring itself was not illegal.

Similarly, as to the conspiracy to conceal material facts, because the conduct alleged does not constitute a violation of the substantive statute, the agreement to do the act cannot constitute a conspiracy to violate that statute. A conspiracy to defraud may be found, however, even though no substantive offense under any statute has been committed. However, in this case the indictment did not allege an illegal intent or motive to avoid the reporting requirements, and the court held that the indictment was insufficient because it did not allege the particulars of a fraudulent scheme, in particular fraud or deceit.

United States v. Denemark, 779 F.2d 1559 (11th Cir. 1986)

The defendant purchased fourteen cashier's checks in the amount of $9900 from fourteen different banks in the Tampa area. He was convicted of using a trick, scheme or device to conceal the source, origin and transfer of approximately $154,000 from the IRS, by causing the banks to fail to file CTR's, in violation of 18 U.S.C. 1001. He appealed, arguing that the banks were not obligated to file CTR's, because none of the transactions exceeded $10,000.

Held: Since the defendant engaged in no single transaction involving currency of more than $10,000, the banks were not required to file CTR's, and because the banks were not required to file, the defendant could not be prosecuted for causing the banks to fail to perform an act which they had no legal duty to obligation to perform. In addition, the transactions could not be aggregated because none took place at the same time and in the same financial institution.

The court distinguished the situation where a person conducts multiple transactions in several branches of a single bank in a single day, finding that that problem was not presented in this case.

United States v. Varbel, 780 F.2d 758 (9th Cir. 1986)

The defendants set up a money laundering scheme in which currency was moved from the United States to a dummy corporation in the Cayman Islands. In connection with this scheme, the defendants purchased six cashier's checks from six different banks over a two day period. The checks totalled approximately $50,000, but no single transaction in currency exceeded $10,000.

The defendants were convicted of conspiring to conceal and concealing material facts in violation of 18 U.S.C. 2, 1001 and 371, and of two counts of wire fraud in violation of 18 U.S.C. 2, 1343. The material facts allegedly concealed were the existence, source, and transfer of cash from the United States to the Cayman Islands without the filing of CTR's by the banks, and the return of the money to the United States as non-traceable loans.

Held: Because the transactions involved amounts less than $10,000, no CTR's were required. Moreover, in accordance with the Anzalone decision, the defendants were found to have no duty to inform the banks of the structured nature of the transactions. Application of criminal sanctions to these activities would therefore violate due process. Since the defendants had no duty to disclose the nature of their transactions, they could not be held liable under 18 U.S.C. 1001, and they could not cause the banks to commit a crime, in violation of 18 U.S.C. 2, because the banks were not under a legal duty to file CTR's. The convictions for wire fraud were also dismissed. As the defendants had not illegally concealed matter within the jurisdiction of the IRS, the wire transfer of funds could not constitute furtherance of a scheme to defraud the IRS. (The court did not explicitly address the violation of 18 U.S.C. 371, the conspiracy provision.)

United States v. Dela Espriella, 781 F.2d 1432 (9th Cir. 1986)

Appellants were involved in a two year scheme to convert millions of dollars in U.S. currency derived from cocaine trafficking into negotiable instruments such as cashier's checks. Appellant Ronderos was the apparent kingpin of the operation, and employed the other appellants as runners, who, each day, carried large sums of currency to various banks and converted the cash into negotiable instruments. To avoid the reporting requirements of 31 U.S.C. 5313, Ronderos instructed his runners to purchase cashier's checks for less than $10,000, although an individual runner might convert more than $100,000 in a single day, in transactions at as many as nineteen different banks. The runners entered conditional guilty pleas to one count of conspiracy to violate the currency reporting laws and to defraud the government, in violation of 18 U.S.C. 371 and 31 U.S.C. 5313, 5322 and to one count of fraudulent concealment of material facts from the IRS, in violation of 18 U.S.C. 1001. Appellant Ronderos additionally conditionally pled guilty to one count of violating 18 U.S.C. 1001 (Count Ten); one count of conspiracy to aid and abet the possession and distribution of cocaine, in violation of 18 U.S.C. 2 and 21 U.S.C. 846 (Count One); and one count of causing a financial institution not to file CTR's, in violation of 18 U.S.C. 2 and 31 U.S.C. 5313, 5322 (Count Seven). Also, on stipulated facts, the district court found Ronderos guilty of operating a currency exchange business that failed to file CTR's, in violation of 18 U.S.C. 2 and 31 U.S.C. 5313, 5322. Appellants appealed on the basis that the indictment failed to allege a crime.

Held: The convictions of the runners were reversed on the basis of the Varbel decision. CTR's were found to be required only when the currency transaction involved $10,000 or more. Because the individual transactions were perfectly legal, there could be no violation of 18 U.S.C. 2 or 1001. The court thought it equally clear from Varbel that, where each transaction involved less than $10,000, there could be no conspiracy, under 18 U.S.C. 371, to violate Section 5313. Ronderos' convictions on Counts Seven and Ten were also reversed on this basis.

With respect to Count One, the court found that although money laundering itself is not a crime, a person could be held liable for conspiracy because he provided a central service to a criminal venture. The government must show a sufficient link between the money laundering and the underlying drug transaction, a link furnished here by concessions in the guilty plea.

The court also found that the term "financial institution" was to be defined broadly for purposes of 31 U.S.C. 5313, and that, as an individual, Ronderos could be a financial institution. The stipulated facts made it clear that Ronderos engaged in laundering activities, handled currency amounting to more than $10,000, and failed to file CTR's. The convictions on Counts One and Six were therefore affirmed.

United States v. Giancola, No. 84-3861 (11th Cir. March 12, 1986)

Appellants purchased a total of $88,740 of cashier's checks for currency on two days in October of 1983. On two days in June of 1984 they engaged in similar transactions, this time purchasing $179,122 of money orders for currency. On both occasions the purchases were made from a number of banks and branches, and no single check or money order purchase involved more than $10,000. However, during several of the purchases on a single day the appellants, from the same cache of currency, bought either two cashier's checks for more than $10,000 at different branches of the same bank, or bought money orders totalling more than $10,000 from different branches of the same bank. Appellants were convicted of conspiring to defraud the United States, in violation of 18 U.S.C. 371.

Held: There is no question that appellants engaged in a single transaction, although disguised as more than one, on the same day at branches of the same bank. Under the statutory definition, multiple branches of one bank are considered one financial institution. Under the statute, the bank therefore had a duty to file CTR's with respect to those transactions which occured on the same day at different branches. Since the structuring of the transactions by appellants was sufficient to cause the bank to fail in this duty, it was sufficient to constitute the crime for which they were charged.

Structuring transactions in amounts of less than $10,000 in different branches of the same bank for the purpose of avoiding the reporting requirements of 31 U.S.C. 5313 constitutes a conspiracy to defraud the United States, in violation of 18 U.S.C. 371.

U.S. Department of Justice

National Drug Enforcement Policy Board

Attorney General, Chairman

18 June 1986

Honorable Mark O. Hatfield
Chairman, Committee
on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The DOD Authorization Bill for FY 1986 called for the establishment of an Air Force Special Operations drug interdiction air wing to provide peacetime air interdiction surveillance and detection assistance to drug enforcement authorities.

The conference report accompanying the FY 1986 Appropriations Act (appended to the Continuing Resolution) required the Department of Defense to configure one AC-130H-30 stretched variant gunship for drug interdiction surveillance deliverable not later than January 31, 1987. Thirty-five million dollars were appropriated for this purpose. The Conference Report also suggested that DOD should consider budgeting for an additional nine AC-130H-30 gunships during FY88-89.

In my letter to you on February 12, 1986, I expressed the National Drug Enforcement Policy Board's concern that the C-130 gunship was not the most cost effective means of providing air surveillance and detection (Enclosure 1). Further, I suggested that the Policy Board would work with the Congress to identify appropriate resources best suited for drug surveillance and intelligence needs, consistent with DOD mission requirements.

In an April 18, 1986 letter to the Vice President, Senator DeConcini and Representative English proposed a plan to implement the DOD Air Wing (Enclosure 2). This plan provides for seven aerostat radar surveillance balloons (two in the Bahamas and five along the U.S. Southern tier); ten C-130 aircraft retrofitted with target acquisition radars (two for SOUTHCOM; remaining eight divided equally between Florida and Arizona); and four Customs P-3A aircraft (or suitable platform) retrofitted with 360° radar.

The National Narcotics Act of 1984 empowered the Policy Board to review, evaluate and develop United States Government policy, strategy and resources with respect to drug law enforcement efforts. Accordingly, on May 19, 1986, the Vice President asked the Policy Board to review the Congressional plan. The Policy Board analyzed the plan and agrees that certain parts of it would help address the problem along the Southern tier.

Specifically, they are: placing five aerostats along the Southwest border, moving Air Force helicopter assets to Davis Monthan AFB, and providing two C-130's to SOUTHCOM to assist drug law enforcement on a not-to-interfere-with-mission basis. The Board believes that the location of the aerostats and other detection assets should be determined by those agencies responsible for their operation.

In addition to the above elements from the Congressional plan, the Policy Board proposes modifications which address interdiction needs and also provide an effective enhancement to the Government's overall anti-drug effort. The alternative proposal constitutes a Government-wide package that will initiate improvements in several of the critical components of the drug strategy. They are presented in Enclosure 3.

The total cost of our proposal is $232.9 million (plus one year O&M of $33M), compared with $309M (plus $61M O&M) for the Congressional plan. Not only would this alternative cost the taxpayers less, the Policy Board believes that it would also be more effective. Our proposal simultaneously addresses several of the key elements of the strategy in a balanced approach, rather than focusing solely on interdiction assets.

While I believe that our proposal fully addresses the needs along the Southwest border, the differences in terrain and threat along the Southeast border pose a more complex set of problems. As an interim solution, the Policy Board endorses the substitution of E-2C's for P-3A's as air surveillance platforms. The P-3A's would then be returned to DOD. (In our view, the E-2C is superior to the P-3A in terms of cost, effectiveness and availability.) However, the Policy Board must emphasize that it is prudent to study other air surveillance modalities before final determination is made for the Southeast border. We will forward to the Congress, following the Policy Board's expedited review, a complementary report for the Southeast border.

I know you share our concern over the adverse impact illicit drug trafficking has on our nation. On behalf of the Board, please be assured of our willingness to work with the Congress to effect measures to end this national scourge. I have sent identical letters to Chairmen Goldwater, Whitten, and Aspin.

Sincerely,

Edwin Meese III

EDWIN MEESE III
Attorney General

Enclosures

cc: Honorable George Bush
The Vice President
of the United States

U.S. Department of Justice

National Drug Enforcement Policy Board

Attorney General, Chairman

February 12, 1986

Honorable Jamie L. Whitten
Chairman, Committee
 on Appropriations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The National Narcotics Act of 1984 created the National Drug Enforcement Policy Board (NDEPB) and empowered it to review, evaluate and develop United States Government policy, strategy and resources with respect to illegal drug law enforcement efforts, including budgetary priorities and a National and International Drug Law Enforcement Strategy. Further, it designated the Attorney General as the Chairman of the NDEPB and the primary advisor to the President and Congress on national and international drug law enforcement programs and policies developed by the Board.

In carrying out the Board's responsibilities, we have recently analyzed our air interdiction surveillance capabilities. In the course of our review it was brought to the Policy Board's attention that the conference report accompanying the FY 1986 Appropriations Act requires the Department of Defense to configure one AC-130H-30 stretched variant gunship for drug interdiction surveillance. Thirty-five million dollars have been appropriated for this purpose. (It is important to note that the $35M appropriation will not provide sufficient funds to fully equip the aircraft with all of the gunship unique subsystems described in the conference report.) Conference language states that the Air Force Special Operations Forces (SOF) would be the appropriate choice to carry out this new mission. The NDEPB has serious reservations about the effectiveness of such an approach.

The Defense Department has concluded that utilization of a gunship in a manner prescribed by the conference report will not satisfy highly intensive training requirements for personnel who operate sophisticated gunship systems aboard the aircraft. As the Chief of Staff of the Air Force stated in his July 3, 1985, letter to the Chairmen of the House and Senate Armed Services Committees,

"SOF training requires highly accurate navigation

Enclosure 1

> to a precise point to fulfill stringent training requirements attendant to clandestine infiltration/exfiltration and resupply of ground and naval teams. This mission is the antithesis of broad area search and surveillance which the drug mission requires." (my emphasis).

Accordingly, the NDEPB is concerned that the conference report is too specific regarding hardware and mission, and that it eliminates the flexibility to determine the most effective manner of implementing the intent of the conference report, consistent with the needs of military preparedness.

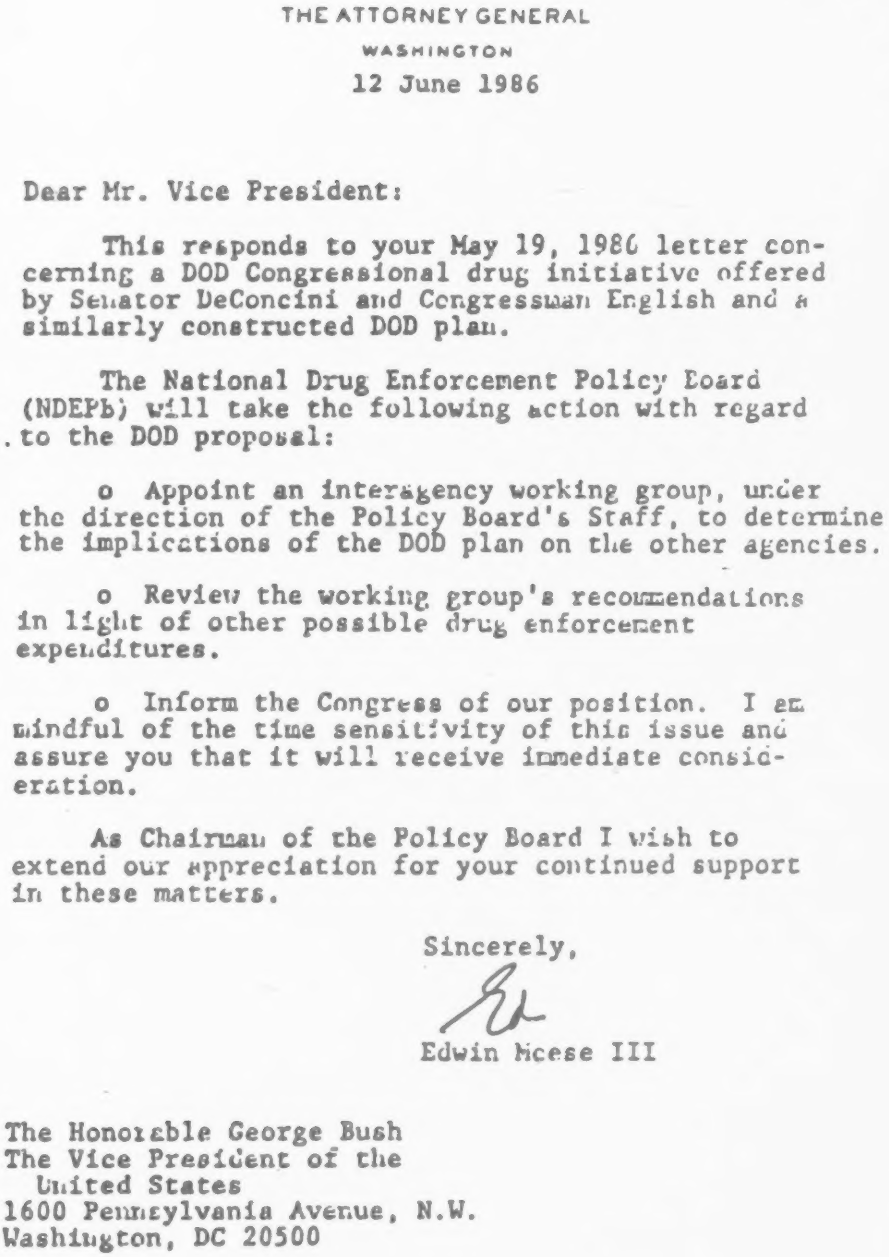
The members of the NDEPB have concluded that the AC-130H-30 is not the most cost effective means of providing air interdiction surveillance and detection. Accordingly, we believe that the Policy Board should work with the Congress and the law enforcement community to identify appropriate resources best suited to serve drug surveillance and intelligence needs that also meet DOD mission requirements.

The coordination and cooperation between the legislative and executive branches have been important factors in this country's battle against illicit drug trafficking. I look forward to continuing cooperation in the future. I have sent identical letters to Chairmen Goldwater, Hatfield, and Aspin.

Sincerely,

Edwin Meese III

EDWIN MEESE III
Attorney General



THE ATTORNEY GENERAL
WASHINGTON

12 June 1986

Dear Mr. Vice President:

This responds to your May 19, 1986 letter concerning a DOD Congressional drug initiative offered by Senator DeConcini and Congressman English and a similarly constructed DOD plan.

The National Drug Enforcement Policy Board (NDEPB) will take the following action with regard to the DOD proposal:

o Appoint an interagency working group, under the direction of the Policy Board's Staff, to determine the implications of the DOD plan on the other agencies.

o Review the working group's recommendations in light of other possible drug enforcement expenditures.

o Inform the Congress of our position. I am mindful of the time sensitivity of this issue and assure you that it will receive immediate consideration.

As Chairman of the Policy Board I wish to extend our appreciation for your continued support in these matters.

Sincerely,

Ed

Edwin Meese III

The Honorable George Bush
The Vice President of the
  United States
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

THE VICE PRESIDENT
WASHINGTON

May 19, 1986

Honorable Edwin Meese, III
Chairman, National Drug
Enforcement Policy Board
U. S. Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Ed:

Our staffs have been working together to ensure a proper response is made to Congressional interests on several issues having budgetary, resource or policy implications. I ask that as Chairman of the National Drug Enforcement Policy Board (NDEPB) that you take the appropriate timely action on the attached letter as it contains a list of items not unlike the one recently sent to you by the Secretary of Defense for consideration.

My National Narcotics Border Interdiction System (NNBIS) staff is available to assist your NDEPB staff in ensuring that all aspects of the Department of Defense and the Congressional proposal are considered. I look forward to working with you in continuing our mutual efforts to promote a workable strategy on drug law enforcement.

Best personal regards,

George Bush

Enclosure:

Copy of Senator DeConcini/Congressman English's letter dated April 18, 1986 to Vice President Bush

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510

April 18, 1986

The Honorable George Bush
Vice President of the
  United States
Washington, D. C. 20510

Dear Mr. Vice President:

On November 15, 1985, President Reagan signed into law the Defense Authorization Bill for FY 1986 -- a bill that contained, among other things, an historic initiative to establish, for the first time in our history, a permanent drug interdiction assistance mission within the Department of Defense. Specifically, Public Law 99-145 contained the bulk of a proposal that we introduced earlier in the year that would establish an Air Force Special Operations drug interdiction "Air Wing" that would provide full time, peacetime drug interdiction service to the nation. Funding for initial start-up of the Air Wing was signed into law by the President in the Continuing Resolution, 1986 (P.L. 99-190).

Since December, our staffs; the staffs of the Air Force, Navy, and the Secretary of Defense's Drug Enforcement Task Force, under the direction of General R. Dean Tice; and other interested private sector groups have been working to formulate an appropriate implementation plan for the new Air Force drug interdiction mission. These have not been easy negotiations. However, as sponsors of the original enabling legislation, we have proposed a compromise plan that appears to have strong support within the Department and which would achieve the objectives outlined in both the DoD Authorization Bill and the Continuing Resolution. The purpose of this letter is to briefly outline the plan that we have proposed to the Department and to reinforce our sincere interest in you as Head of the National Narcotics Border Interdiction System (NNBIS) joining with us in implementing this important new drug interdiction initiative.

The Air Wing plan that came out of both the DoD Authorization Bill and Continuing Resolution called for the establishment of a Special Operations Component within the Air Force force struture, including a fleet of ten, AC-130H gunship surveillance aircraft to be retrofit with sophisticated target acquisition radar. An appropriation of $35 million was provided in the Continuing Resolution to develop the first prototype of the ten aircraft and to initiate plans for full implementation of the Air Wing. Because of concerns within the Air Force over the designation of the AC-130 aircraft for the mission, we developed a compromise plan that would incorporate the initial concept contained in the enabling legislation i.e., for a full time drug interdiction "wing" within the Department of Defense, but which broadened the base of participation and the type of resources to be put into the new Air Wing program. Specifically, our plan, as proposed to the Air Force in February, contains the following elements:

AIR FORCE WILL PROVIDE:

7- Full scale aerostat radar surveillance balloons, to be located along the Southwest border (4); in the Bahamas at Georgetown (1); in the Panhandle of Florida (1); and in either the Turks/Caicos Islands; or in the southern end of the Bahamas archipelago.

10- C-130 aircraft to be retrofit with appropriate air target acquisition radar, probably F-15 or APG-164 radar, including eight (8) penetrating tanker model C-130 aircraft and two (2) regular C-130 models for deployment in SOUTHCOM out of Panama.

The C-130 tanker aircraft with radar would be deployed out of Duke Field in Florida (4) and Davis Monthan Air Force Base in Arizona (4) and be linked with existing HH-53 refuelable helicopters for use in the Wing.

* The 302nd Special Operations Squadron currently located at Luke Air Force Base in Arizona would be shifted to Davis Monthan Air Force Base near Tucson to be co-located with the C-130 Tanker Aircraft

* The 301st Special Operations Squadron would be located at Duke Field in Florida, also co-located with existing helicopter assets.

NAVY WILL PROVIDE:

4- P-3A, P-3B, or other appropriate platforms to be retrofit with APS-138, 360-degree radar and turned over to the U.S. Customs Service to be used for drug interdiction and surveillance purposes in that important drug interdiction agency. The Navy would handle the integration of the radar on the P-3 or other aircraft; manage the contracts that would be awarded to complete this task; and provide technical assistance to Customs prior to and after delivery of the aircraft. Customs would then provide the operation and maintenance of the aircraft, as they are now doing with their P-3A model aircraft with F-15 radar.

It is our understanding that this proposal has been approved at certain levels within the Pentagon and is awaiting final approval by the Secretary of Defense. We are also informed that your staff may be cognizant of this proposal and would be willing to sit down with our respective staffs to discuss the details of the plan in the near future. More importantly, we strongly believe that you, as the head of the President's national interdiction effort, can play the crucial role in the implementation of this initiative and we encourage you to do so. Of course, we stand ready to work with you in anyway we can to see that this compromise plan will be approved and implemented as quickly as possible. The drug threat to our borders dictates that we must bring the military into the War on Drugs in a way that is proper, effective, and within the confines of the Posse Comitatus restraints imposed by law. The President's Commission on Organized Crime concurs. We believe that our plan, as outlined above, is a plan that will work and which can be put into action promptly.

Thank you for your commitment to the drug interdiction effort and for your willingness to consider this plan of attack against the narcotics trafficker. We look forward to working with you to accomplish our mutual objectives.

Sincerely,

Glenn English
U.S. Representative

Dennis DeConcini
Dennis DeConcini
U.S. Senator

POLICY BOARD'S ALTERNATIVE PROPOSAL*

Interdiction

Items from Congressional plan:

o 5 Aerostats for Southwest border**	$ 62.5M
o Transfer 6 Air Force Helicopters to Davis Monthan AFB in Arizona***	$ 15M
o 2 C-130's to Southcom***	$ 79.4M

Other items:

o Customs Service Command, Control, Communication's Intelligence Center (C^3I) for the Southwest border	$ 10M
o An All-Source Intelligence Center to modify or replace the existing El Paso Intelligence Center (EPIC)	$ 15M
o 4 E-2C's for Southern border**	$ 14M

International/Intelligence

o DEA foreign agents	$ 4M
o Intelligence Community**	$ 12M

Investigations

o DEA voice privacy radios	$ 7M

Drug Prosecution

o U.S. Attorneys	$ 6M

Drug Abuse Prevention

o National Institute of Drug Abuse	$ 3M
o ACTION	$ 5M
TOTAL:	$232.9M

* Additional O&M for full year operation is estimated at $33M.

** Acquisition funded by DOD; O&M funded by other agencies.

*** Acquisition and O&M funded by DOD.

Enclosure 3

The **Chairman**. Now we have one witness left here, Richard H. Dionne. Would you come around, Mr. Dionne. I believe you have been sworn already. Mr. Dionne, without objection, I will put your statement in the record. Would you want to give the thrust of your statement, just tell us off the cuff anything you want to say.

TESTIMONY OF RICHARD H. DIONNE, PRESIDENT AND CHIEF OPERATING OFFICER, PROVIDENT INSTITUTION FOR SAVINGS, BOSTON, MA

Mr. **Dionne**. I would like to give——

The **Chairman**. You do not need to read the statement. We will put it in the record. I will put your whole statement in the record.

Mr. **Dionne**. OK.

The **Chairman**. Can you just tell us what you have in your mind and in your heart?

Mr. **Dionne**. OK. Sir, I did have the prepared statement and I did want it to be included in the record and I thank you and I would like to give a brief summary of that statement at this time, because I think after hearing the discussion this afternoon I think some of the questions will be addressed in the summary and I think some of the direct answers affecting the bank will also come out in this brief, very brief summary.

Mr. Chairman and members of the committee, I want to thank the Committee on the Judiciary for the opportunity to appear here today. I would like to describe for the committee the Provident's response to the Federal Government's investigation, and what that response meant and the Provident's decision to plead guilty to the Government's charge against us.

Beyond these basic facts, however, we would like to describe for the committee what the bank has learned from the investigation and what lessons we believe may be derived from it.

After receiving the grand jury subpoenas, the Provident decided that it would conduct its own internal investigation to determine whether or not the Provident had failed to report currency transactions as required and whether our compliance efforts could be improved.

From a management and business perspective, we felt it necessary to undertake this internal investigation. If, inadvertently, we were not complying with the law, we wanted to know about it and make absolutely certain that no further violations would occur.

Rather than use our normal general counsel, we hired outside special counsel, Mr. Alan Rose and his firm of Nutter, McClennen & Fish, to oversee the internal investigation, to interview bank employees, to review bank records, and generally to do whatever was necessary to uncover any alleged wrongdoing.

We believe that Mr. Rose, as a former assistant U.S. attorney in Boston and specialist in Federal criminal litigation, had the expertise to conduct a thorough and independent investigation.

We also decided that we would cooperate fully with the Department of Justice in its investigation. The bank investigated one branch which was not under investigation by the Justice Department, and the bank turned over to the Justice Department 25 unreported transactions. Approximately 20 bank employees testified in the Federal grand jury, with the bank's full encouragement.

The Provident's internal investigation disclosed that the bank's clear policy had been to comply with Federal statutes and regulations concerning CTR's. The bank's files contain copies of CTR's that had been filed as far back as 1975. The investigation also disclosed that the responsibility for filing the CTR's was at the branch level, that the failures occurred at the branch level and that no bank officers or employees higher than the branch level had any complicity in the reporting failures.

The bank maintained no exempt lists employed by other banks which exempted certain regular customers from the reporting requirements. Our internal investigation also revealed that in a joint report of examination of the bank, the Massachusetts State Banking Commissioner and the FDIC stated:

> The bank is aware of its responsibilities under FRRCFT and appears to be in compliance. The bank's current procedures are adequate to insure that all covered transactions are properly reported.

The Provident has never contended and does not mean to contend today that these regulatory agency statements excuse specific violations of the reporting requirements. The statements were nonetheless important, however, as reinforcing management's belief that a compliance program was in place, that the compliance program had been scrutinized by the Provident's principal regulators and that these principal regulators had given the bank strong reason to believe that the bank's CTR procedures were adequate to insure compliance.

We realized quickly, however, that our compliance program could be improved. We have therefore supplemented our training efforts, heightened awareness of the spirit and letter of the CTR regulations at all levels, and improved our auditing program.

We believe now that we are in full compliance with the CTR regulations and we are committed to remain in compliance. At the conclusion of the Federal Government's 18-month long investigation, the total number of unreported transactions which the Government charged us with was 49, involving $956,000 in unreported cash.

The Provident believed and still believes that it should not have been indicted. First, many large commercial banks around the country resolved CTR investigations by paying civil fines to the U.S. Treasury Department. Many of those banks had hundreds of transactions, totaling hundreds of millions of dollars of unreported transactions.

Fundamental fairness seemed to indicate that if large commercial banks, with hundreds of violations, totaling hundreds of millions of dollars of unreported transactions, should be allowed to pay civil fines, a relatively small thrift institution in Boston, with far fewer unreported transactions, should be dealt with civilly as well, especially in view of the bank's established compliance program.

Let us be clear on this point: We did not seek special treatment, but merely equal treatment. It seemed to us that the administration of the law should not be different in a particular part of the country; second, due to the fact that we had been informed by Federal regulators that we were in compliance, and since we did in fact have a compliance program, the violations that did occur were clearly departures from bank policy and practice and therefore accidental; third, the bank felt that its cooperation with the government's investigation should be given great weight in the Government's prosecutorial decision.

Ultimately, the Provident decided that it should plead guilty to a one-count information, and to pay a fine of $100,000. In accepting the plea agreement, Judge Skinner specifically referred to the bank's cooperation and compliance practice.

Why did the Provident decide to plead guilty? The bank concluded that it should accept corporate responsibility for the violations. To the extent that our employees made mistakes, the bank was willing to accept responsibility for our employees mistakes.

In closing, it seems clear that banks are complying with the act. Federal resources are limited. The Provident believes that the Government's enforcement efforts should be directed at those criminal elements which would abuse and manipulate the banking system for their own end.

Thank you for the opportunity to appear before you and we are available to respond to any questions which the committee may have.

The CHAIRMAN. I just have a few questions here, Mr. Dionne. Since the recent case against Provident by the Justice Department, what changes has the bank made in currency transaction reporting policy and teller training to avoid the type of reporting problems which led to the case against Provident?

Mr. DIONNE. Senator, we went far beyond teller training. What we found ourselves was the general need to create a much higher level of awareness of just what the Bank Secrecy Act was, why it was enacted, and what responsibility every bank employee has to comply with the spirit and the letter of that law.

We took specific steps to overhaul our training program. We do have movies on training for CTR's, something like what you saw today. Our entire manual has been changed to reflect the seriousness of looking for and following through on cash transactions in excess of $10,000. On top of that, we now have a capacity to review transactions of $2,500 and up, and that is being done and is included in our revision of our audit scope.

We actually followed through with that to see how well we were doing. As an aside, we hired outside professionals to visit each of our ten facilities, our offices, and to try to perpetrate the system and they made the tellers very uncomfortable and wanted things to happen right away and got angry with people, just to see if they could get away with withdrawing and/or putting cash in. We had set up dummy accounts 2 months before we actually did the test, and we had a 100-percent response. All of the forms that should have been filed were filed.

We have an ongoing serious awareness program that we feel will keep us in compliance.

The CHAIRMAN. What long-term modification of bank policy and practice would you anticipate all banks would need to consider?

Mr. DIONNE. Mr. Chairman, I think it is obvious to those of us in banking that the banking industry has not done its job. It did not pay attention to the changes. You cannot blame the regulators, you cannot blame Joe Blow down the block. The bankers are much more sensitive and are executing I believe—I can speak for our shop—the Bank Secrecy Act legislation. I think some of the comments I heard here today about changing various segments of the law or introducing completely new segments to stop this money laundering ought to be thought out very carefully.

I think in my estimation that the current law really has not had a chance to work. Really, if the banks historically had been preparing all of the reports, I think there would be a different light to be shed on where we stand today on how effective the current piece of legislation, the current law is.

So I would like to see the current law have a chance to work, and I am not against refinements to it.

The CHAIRMAN. Now, as a representative of the banking community, how would you feel about a requirement that bank customers sign a statement, subject to criminal prosecution for perjury that the currency transaction they are making is not part of a structuring scheme?

Mr. DIONNE. Senator, I think that has substantial merit, since it really helps to put the onus on the customer and to share the responsibility with, in this case I guess, the bank. I think what it will do is it will create a much higher level of awareness at the customer level. Right now we have to inform the customer that the report has to be filed, so many customers are already aware of it. But I think the minute you assign the responsibility for a customer to sign off, I think on a national basis the level of awareness is going to increase substantially. I favor that, Senator, over placing more emphasis and holding the teller more responsible for making character decisions, for example.

The CHAIRMAN. Now, what proposals could you make which would allow banks and law enforcement agencies to work in concert to deter money laundering through banks?

Mr. DIONNE. Could you repeat that for me, please, Senator?

The CHAIRMAN. What proposals could you make which would allow banks and law enforcement agencies to work in concert to deter money laundering through banks?

Mr. DIONNE. My recent experience at the Provident, where we did work in serious concert, not window-dressing concert, serious concert with the Treasury Department indicates to me that a lot more of this could be done. What I received from the Department of the Treasury was that they were not accustomed to having banks volunteer total cooperation. So I think the spirit of cooperation, much like Senator Biden was referring to earlier, where people just get together and get down to it and get it done, is the real way to get it done, rather than camouflaging it with a lot of new routines which would require a great deal of time and energy just to implement.

The CHAIRMAN. I might ask Mr. Trott the same question I asked you. Mr. Trott, if you will answer this: How would you feel about a requirement that bank customers sign a statement, subject to criminal prosecution for perjury, that the currency transaction they are making is not a part of a structuring scheme?

Mr. TROTT. Senator, we would favor that. As a matter of fact, that has been one of our proposals that we have been discussing with Treasury.

The CHAIRMAN. That is not in the bill you presented to us, is it?

Mr. TROTT. No, it is not. That is something we are working on with Treasury.

The CHAIRMAN. Would you favor adding that to the bill?

Mr. TROTT. I would have to take a look at that. I am not sure that it would necessarily fit within the money laundering statute, but that could be an amendment to the Bank Secrecy Act.

The CHAIRMAN. Would you take a look and confer with the staff on that?

Mr. TROTT. Yes, we will, Senator.

The CHAIRMAN. Whether it would be appropriate to add it to your bill or have a separate bill.

Mr. TROTT. Yes, we will, and there are some parts of the bill that will move in the right direction, such as the Financial Right to Privacy Act. In the bill as it now stands, there are amendments that would encourage banks to report, financial institutions to report these kinds of violations to law enforcement and give them protection for good-faith reporting.

The CHAIRMAN. The distinguished Senator from Delaware.

Senator BIDEN. Thank you very much.

Mr. Dionne, thank you for coming down to testify. I appreciate it. I know your schedule is busy and you have a lot to do, but we do appreciate your taking the time to come down.

Let me ask you, these 49 transactions—I am not going to ask you about each of them, but just if you can characterize for us how they took place. Were they in amounts that were $50,000, $60,000, $100,000, or did they vary from $5,000 to $250,000? I know the aggregate was just under a million, but when you went back and investigated, what did you find out?

Mr. DIONNE. There were—most of the transactions were under $50,000 and divided between two branches, the north end branch, where the Anguilo relationships were, where we had 16 transactions, and as we looked at those we, of course, looked at where checks or where the funneling was going, and a lot of the—in that case a lot of the—most of the transactions were involving cash given to the bank for checks which were made out to the Massachusetts Department of Revenue for tax payments and the IRS, and also deposits to retirement accounts. The other——

Senator BIDEN. Now, did they come—this is just for my own gratification—those deposits of under $50,000 by and large, did they come in in fives and ones or were they $100 bills or—I am trying to get a—did the guy walk in with a suitcase or——

Mr. DIONNE. The guy walked in with a paperbag full of cash, in all kinds of denominations and that type of thing, just like you read about in the papers.

Senator BIDEN. Now, let me ask you, is that kind of transaction—how long have you been in banking?

Mr. DIONNE. I have been in banking for 18 years.

Senator BIDEN. In your experience, is that a normal kind of transaction? When the hardware store closes down at 5 o'clock and they bring the receipts, do they bring it in in paperbags sometimes? I mean is that an automatic giveaway? I mean it just seems to me as a layman that that is kind of an automatic giveaway, a guy has $50,000 or $10,000 in a paperbag in fives and tens.

Mr. DIONNE. Senator, it depends. You can have grocery store people, mom and pop type stores, that is how money would come in.

Senator BIDEN. But do not most of them have your bank's little bag? I mean I see all these folks running around, I mean the most sophisticated—the barber shop I go to, you know, he has a little bag from Wilmington Trust Co., it zips up with a little lock, you know——

Mr. DIONNE. I am not saying they all came in brown paperbags.

Senator BIDEN. I guess what I am trying to say is is it not an overwhelming rarity that anybody brings anything over, you know, more than a hundred mills, whether they are ones or whatever they are in a brown paperbag? I mean——

Mr. DIONNE. It depends. In the Chinatown area, where the other violations that we found in our own investigation— in fact, there were more violations there—there is a cash culture, people deal in cash and how it comes in is it can come in in many forms.

Senator BIDEN. Well——

Mr. DIONNE. Is it suspicious? Should it be reported? I mean that is really what we are trying to get at. The bank——

Senator BIDEN. Well, first I was trying to get at what it is—I think it is good for the record to illustrate what we are talking about. We talk about money laundering, but ultimately when we talk about drug deals, you are talking about amounts of cash that are not able to be pulled out of your pocket.

Mr. DIONNE. Yes.

Senator BIDEN. They end up in a valise, a bag, a suitcase, I mean that is a lot of—and I wonder how many times in a small branch or a large branch a teller ever sees someone walk in with the equivalent of a shopping bag or a suitcase or a valise full of money. I mean does that happen is that not something that automatically——

Mr. DIONNE. As I understand it, I am not a native of Boston, I joined the bank in 1984, I am from Hartford, CT, and I was up in the Portland, ME, area, where that was not really more the case than not. But in the Chinatown environment, it is very normal to deal in cash, in large amounts of money. These transactions, Senator, happened over a series of years and many of the cash transactions that did occur in both of these offices did have CTR's filed on them.

What we found was we were not consistent in filing cash transactions when we should have, and that is in every single case, and the bank makes no excuses. We should have had a heavy-duty compliance, awareness program and that is what really caused these deviations from our policy, sir.

Senator BIDEN. I am trying to move a little bit beyond—because you seem like a really straightforward, honest guy—I am trying to move, and I am not being solicitous, I am trying to move beyond the legality here.

Mr. DIONNE. Yes, sir.

Senator BIDEN. One of the things that we have, as you can tell by the exchange that Mr. Trott and I had, is much of what we do and how we approach things ends up breaking down based upon—breaking down may be the wrong word—the disagreement comes based upon what is reasonable to ethically expect of a citizen.

Now, if a person came in to one of your tellers at one of your branches in my State or yours—you do not have branches in my State, but I mean a bank of similar size and it was obvious he has a ski mask hanging out of his pocket or he had a bulge in his shirt, your teller would be quick to hopefully alert by whatever system you have the guard standing at the door or the manager or somebody, and if there were certain obvious things that did not seem to fit—I mean if someone came into your bank and walked over in the corner and was shooting up dope, even though it is not legally their responsibility to call the police for that, most tellers I know would pick up the phone and say, you know, get a cop in here.

Now, what I am trying to get to is is there an ethic in the banking community that says that—what are your total assets?

Mr. DIONNE. $1.2 billion, sir.

Senator BIDEN. $1.2 billion. Let us move to some of the smaller S&L's that are around that, you know. My father-in-law for years was president of an S&L and I do not think it had assets that exceeded $70 million. I may be wrong—reserves exceeding that, I should say.

Now, somebody comes in and wants to deposit——

The CHAIRMAN. Are you almost finished?

Senator BIDEN. Yes, I will not keep them much longer.

The CHAIRMAN. I want to thank all of the witnesses for coming. I have another engagement I have to go to.

Senator BIDEN. I promise I will not keep them long.

A $50,000 deposit, you know, that old joke—and I will not tell you the exact joke, for you may have heard it—about the guy that walks in to the teller and says, a Texas guy walks into a small branch bank and he says I want to put, and he uses a profanity, some blank-blank money in your blank-blank bank, and the teller says, well, you know, we have ways of taking care of people like you who use that kind of language, I will not put up with that. He said all I want to do is put some blank-blank money in your blank-blank bank. And so the next thing she says, she calls the manager over and the manager says, what is the problem here?

She says this fellow is using profanity here and I do not like it. And he says what is the problem, sir. And he says, all I want to do is put some blank-blank money in your blank-blank bank. And he says, how much money do you want to put in my bank? He says $2 million. He says, come on over here and we will see if we can take care of this blank-blank teller and see if we can get it straightened out.

You know, that is a joke and it is funny, but you know, it in fact seems to me to be that we have a tendency to separate the ethic here.

Mr. DIONNE. Yes; maybe I——

Senator BIDEN. And what I am trying to get at is, what are you and your colleagues thinking of these days?

Mr. DIONNE. Let me give you a specific example. I do not think—I do not disagree with what you are saying. In the first place——

Senator BIDEN. I honestly do not know. I have not reached a conclusion on it. I mean, I just want to get a sense of what you are talking about.

Mr. DIONNE. It is awfully hard for me to speak collectively for my colleagues, but I believe that my colleagues in the banking industry and the financial services industry have certainly learned a big lesson over the past few months and if they have not been embarrassed, they should have been embarrassed with some of their performances as well.

Our investigation started way before the Bank of Boston situation became known, so we were actively participating with the Government, and I want you to understand that we felt so strongly about finding out were we in compliance or not, was there complicity going on in our organization, that I did not hire the general counsel of our bank. I went outside to find a professional litigator who had this kind of background and he was given carte blanche and did not have to report to me to ask me to go where or do what. He was to do what he needed to do to satisfy our board of directors.

Senator BIDEN. Sir, I am not trying to cut you short. I really mean this, and you can check that out with Mr. Trott, he knows I tend to be very blunt. If I disagreed, I would say so. I believe you to be a completely—I can imagine just from watching you testify what happened. You probably did what most of us would do. You heard this was happening and you said, my god, let us get this thing cleared up, first of all it may be my head, it may be the bank's head, it may be—let us bring in whoever is responsible, and let us lay them out. I believe you did that.

What I am trying to get at is something beyond that. I am trying to get at this ethic that seems to be growing up, whether it is in American labor or in American business, and I say it equally, is this a new notion of plausible denial, we all want to step back from—not you, I am using "we" in an editorial sense—we all tend to step back and say it did not happen on my watch. We politicians do that, you know, we do not want to know who gave us a contribution, as long as they fill out the form, do not confuse me, do not tell me, do not tell me that guy may not be some—do not tell me that company may be, you know—is it legal, technically legal? Good, that is all I want to know.

We do it. Labor unions do it. Is the guy involved in the labor organization, is he a thug or is he part of organized crime? Do not tell me. I do not want to know. Is he keeping the letter of the law? It is an ethic that seems to be growing up, and what I am trying to get at—and this is more a philosophic discussion and I will drop it at this. I have a bunch of questions for you, I am convinced by the sincerity of your testimony, I would not even bother you with the questions, I am willing to submit them to you because you have got other things to do—but what I am trying to get at is, is there a feeling—every time I have talked about the Bank Secrecy Act with bankers, and you know my State is not one that is insensitive to coporate America's needs. I think that would be a fair statement.

Mr. DIONNE. Yes, it is very fair.

Senator BIDEN. And I am one, notwithstanding the fact that I am one of those horrible Democrats, there is broad, broad support among the financial institutions and the business institutions of my State. What I hear my friends, associates and supporters say in the banking community was what I detected a sense of which you said in your statement, that either you wrote or someone wrote for you, I do not know which, but it went like this, and I am paraphrasing:

You said, with the limited resources of the Federal Government we should be concentrating those resources more on those cases where there is an attempt to manipulate the banking institution than in this area; I assume that was going to be the end of the sentence. I mean that was the indication in this area.

I hear that all the time. I hear the following: Look, there is enough to be done out there. Why are you just picking on us for, more regulation, more regulation, when you distill it to its everyday practice, we are not talking about stuff that is—80 percent of it is not nearly as complicated as we make it all out to be.

It is a case where my 17-year-old son, if he were standing in the bank, and he is an honor student, a great kid, all the good things about kids, perfect so far—knock on wood—if he were standing in the bank depositing his summer paycheck for $60 that week, and a guy walked in with a suitcase and opened it up and gave it to the teller and it had ones and fives in it, my son would say, "probably a druggie,"—my son, who, to the best of my knowledge, is as clean as a whistle.

It does not take a genius. You all make it sound—not you, the banking institutions make it sound like this is some burdensome onerous thing and people do this. It is a simple thing. It does not mean every case. But I cannot understand why, when in fact someone walks in with a paperbag, a suitcase, a valice, a trunk, and opens up the thing and says, "Here, by the way"—in ones, dirty ones, by the way, fives and tens, crumpled, wrapped in rubber bands—"I want to drop them off here, deposit it for me, and, by the way, make a check out for me right away to the IRS," or to the local taxes or whatever the heck it is, or "give it to me back in hundreds," or "deposit it and I will withdraw it 3 days later" in a corporation you never heard of.

It does not take a real genius to think, "Ah-huh, maybe something is wrong here." And I wonder if we are at the point now, whether you believe that the banking institutions say there is nothing particular onerous about saying not only should they report this, but somebody should say, hey, this guy has come in in the last 3 months with two suitcases full of money, someone should call the local police, someone should call the local police, maybe there is something wrong with this guy. Are you all starting to think like that?

Mr. DIONNE. I share your frustration or your points exactly, and I gave a speech which reflected that to many hundreds of bankers in the State of Massachusetts.

Senator BIDEN. How did they respond?

Mr. DIONNE. They did not applaud, but it was not one of those kinds of speeches, I do not think, or one of those occasions.

What I told this group of bankers was there is too much of an adversarial attitude in this country and it is time to get off that kick, and if you have a law it is the law, it is not discretionary, you have got to obey the law and you should want to obey the law. And if you do not think it is a good law, take the appropriate measures to get it changed, and that happens every day. But in the meantime let us work in concert—and the word I used, Senator, was "partnership," so that we do not waste our time and we do not let the criminals get away.

And as one of the witnesses indicated earlier, these guys are not stupid. We need to get our act together to clean up their loopholeability, and I think we can and I think there is a social responsibility that the banking industry has to demonstrate that it buys, and that is let us help clean up this country.

I have a family. People in this room have families. We are all individuals but we are part of this country, and if we do not get together and prevent and try to stop this with reasonable steps—and I think the Bank Secrecy Act is a wonderful piece of law, and I would like to see it have a chance to work. I think you have got the bankers' attention and I am sure as the numbers continue to roll in, I would like to see what happens with some of these CTR reports to see how many prosecutions we can get.

Senator Biden. Well, I applaud that attitude. I would just suggest that you take it one step further. I happen to be an attorney. When I speak to my fraternity, I point out to them that if we were a little better at cleaning our house, we would not have Government coming in and cleaning our house.

I would just like to respectfully suggest to the banking institution, I wonder how many cases have been made totally upon the initiative of banks before the law ever were passed, to say, by the way, something is fishy here, it is their son, it is their daughter who is getting strung out on drugs, it is their home that is being burglarized, it is their community that is being overtaken in some cases by organized crime, it is your fraternity that is beginning to be owned in part by organized crime, they are buying you, whole chunks of you, they are manipulating communities. We are talking about hundreds of billions of dollars.

And what I find reprehensible is the banking community, which goes to the prayer breakfast, which shows up at the community good Government award things, sits there and had to have a Bank Secrecy Act passed, instead of coming to us and saying, "Hey, they have marched into my bank with buckets full of money, there is something that smells." That is what I am talking about.

You expect me to do that—you again in an editorial sense. I hope I would do it. My profession does not do it very well, mine now being a U.S. Senator or "politician," but you expect it. We expect the priests and the ministers and the nuns and the teachers to do it, we expect labor unions to do it—they do not, but we expect it—and yet the business community sits back like somehow it is an unwarranted interference in the free enterprise system to suggest, when someone walks in with a paperbag full of fives and tens, adding up to $50,000, even $20,000, that somebody should not say at that local bank or, local or not, international banks, say, "Hey, we ought to pick up the phone and call Detective Schmedlac, I've got this guy's name, I've got his address, something should be happening, we don't want to fool around with customers." It is an ethic that has to change.

You obviously are a guy who seems like you have gone well on your way to change it and I compliment you on your follow-up to this investigation, and I am not being facetious. I applaud your efforts, I really do.

Mr. DIONNE. Thank you.

[Response to question of Senator Specter follows:]

April 17, 1986

Strom Thurmond, Chairman
United States Senate
Committee on the Judiciary
Washington, DC 20510

Dear Senator Thurmond:

This will respond to the question from Senator Spector which was attached to your letter of April 3, 1986. The question, and my answer, are as follows:

Q. The current Right to Financial Privacy Act states that a financial institution may notify the government of information which may be relevant to a possible violation of a statute or regulation. I understand that legislative proposals to modify this Act include the revision of the current provisions to allow financial institutions to provide financial records to government agencies if the institution has reason to believe they may be relevant to a possible violation. What is your view on these proposed modifications, and how do you feel they comport with bankers' longstanding policy of preservation of customers' rights to privacy?

A. We have reviewed S. 1335, the "Money Laundering and Related Crimes Act of 1985," and note the proposed change in section 1113 of the Right to Financial Privacy Act of 1978 (12 USC §3413). Although we understand the government's desire to encourage banks and bank employees to turn over to the United States financial records, we do not believe that this proposed amendment will accomplish that result. The difficulty with this type of statute is that it does not provide a bright line standard that banks and bank employees can use to decide which information can and cannot be turned over. By contrast, the currency transaction reporting requirement that all transactions involving currency in excess of $10,000 be reported to the Internal Revenue Service, does provide the clear standard that banks and bank employees need in order to comply with the law. Section 3(a) of S. 1335 would provide an exemption from the Right to Financial Privacy Act where a financial institution turns over financial records which the institution "has reason to believe may be relevant" to certain violations of law. Although we do not specifically oppose this bill, we think that it is not realistic to expect that the government will receive substantial amounts of information because of the bill. The reason is that the bank must hazard a guess as to whether or not there is "reason to believe" that the financial records in question "may be relevant" to a criminal violation. We believe that it is simply too much to expect of financial institutions and their employees to make such judgments, and to the extent that the Administration or the Congress believes that this statutory amendment will greatly increase the flow of information and financial records from banks to the government, we believe that hope is misplaced. Furthermore, bankers have maintained a long standing policy of preserving their customers' rights to privacy, and this statutory amendment will not have much, if any, impact on banker's policies in this regard.

Thank you very much for the opportunity to appear before your Committee on March 25, and to assist the Committee in its important work in this area.

Very truly yours,

Richard H. Dionne

Senator BIDEN. And I think we could solve—the best way to keep us out of your hair is for you to do things which citizens are demanding of us to take action on, that just your gut, just your plain old instinct tells you that something is rotten in Denmark.

I ask that of my child, I do not see why I should ask any less than that of my bank.

Yes; Mr. Trott.

Mr. TROTT. May I leave you with two short thoughts. One is repetitious. To me, it appears that one of the main impediments to the attitude that you describe as so necessary to get us where we want to go is that many bankers—I do not know whether my companion at the witness table feels this or not—many bankers still believe that if they blow the whistle by calling the police, they can be personally sued or the banks can be personally sued under the Financial Right to Privacy Act. I think that is out there as an attitude.

Senator BIDEN. Let me make it clear: No one blew the whistle before we had the act that I am aware of. I would like to have a list of all those cases that were blown before there was a Financial Privacy Act.

Mr. TROTT. I am not disputing that, but I am telling you right now that is why we have written in 1,335 something that addresses this and gives protection to a financial institution that, in a good-faith belief, believes they are dealing with the kind of people you just described and calls the police.

Senator BIDEN. I would argue with you that they had not—the demonstration of whether or not they had acted in goodfaith now is whether or not they acted in good-faith before the law existed.

Mr. TROTT. I cannot dispute that at all.

Senator BIDEN. Go ahead. What is the other——

Mr. TROTT. The other point I wanted to make is you have asked what is the ethic out there, and that is why I brought these two videotapes, and I am sorry you did not have a chance to see these. I played the first 6 minutes, and it is the CEO, the president, the chairman of one of the largest banks doing business in the Caribbean, where we had a significant problem, standing up to everybody, with Department of Justice people there, RCMP, Royal Canadian Mounted Police, and telling everybody in that bank essentially what this witness has said today, it is a new game, we do not want drug dealers, we do not want criminals in here, find out who the hell they are and get them out and call the police.

Senator BIDEN. I would like to take a look at the tapes. Do either of the tapes say things like if a woman comes in with a paperbag full of money, is suspicious, do they say those things?

Mr. TROTT. Senator, I almost fell over when I reviewed these. They show—they run through scenarios and one of the scenarios is the nicest looking elderly woman you could ever imagine dealing with a smiling face and then, after they analyze this transaction, they tell the tellers that is a smurf and they nail this woman and they go through here is what she is doing and here is what this is all about and this is what we want you to do when you spot this stuff. These tapes are very good, because——

Senator BIDEN. I will look at both of them.

Mr. TROTT [continuing]. They act out what——

Senator BIDEN. Have they been submitted for the record?

Mr. TROTT. No; they are my personal copies. One is called "Laundromat Blues," and the other is "Don't Get Caught in the Wringer."

Senator BIDEN. Would you do me a favor, assuming the Justice Department's budget, which I keep trying to raise every year, has not been cut too badly, would you make copies and submit them for the record? I would like to have them in the file and I would also like to take a look at them.

Mr. TROTT. We will do it. We will get them for you, but what it does represent is that attitude——

Senator BIDEN. Welcome to Washington. There is even a problem doing that. I don't know——

Mr. TROTT. No; there is no problem. There is no problem. I will give you my personal copies.

Senator BIDEN. No; I do not want to be responsible for that.

Mr. TROTT. I will get some more from the Bank of Nova Scotia.

Senator BIDEN. OK.

Mr. TROTT. But those banks have really turned the corner on this. I have to tell you that that attitude might not have been there but should have been there, but as far as we are seeing now is coming around fast.

Senator BIDEN. That is helpful and we are looking forward to it working even better. Thank you, sir for coming down. Steve, I am sure we will see one another again shortly, not shortly but soon.

Mr. TROTT. Sure.

Senator BIDEN. Thank you very, very much.

[Whereupon, at 4:02 p.m., the committee was adjourned.]

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